

11 March 2026

Meta's Response to the European Commission's Digital Fitness Check Public Consultation

Executive Summary

1. Meta welcomes the opportunity to contribute to the European Commission's Digital Fitness Check. This consultation comes at a decisive moment for Europe's economic future. The evidence is unequivocal: Europe's digital competitiveness is in structural decline, and its regulatory framework is a primary cause. Europe's share of cumulative global market capitalisation of the technology, media, and telecom sector has plunged from 30% in 2000 to 7% today.¹ Not a single one of the world's ten largest companies is European. The EU has not produced a new company with a market capitalisation exceeding €100 billion in fifty years. In the same period, the United States has created six companies worth over €1 trillion.²

2. The EU's primary challenge is the persistent failure to realise a Digital Single Market. This failure —driven by regulatory fragmentation and a regulate-first, risk-averse mindset— is the single biggest barrier to European competitiveness. The Digital Fitness Check should be the vehicle to create the Digital Single Market, but it can only do so if it delivers a paradigm shift in how the EU approaches regulation. The work of Draghi and Letta has been welcome, but businesses overwhelmingly see implementation as insufficient.³ Unambitious, incremental adjustments will lead to failure. We organise our response around five pillars:

- i. a **fundamental reassessment of the EU's regulatory approach**, grounded in evidence of the cumulative economic harm caused by the current framework;
- ii. **structural reforms to the EU's pre-legislative and regulatory governance processes**, including a binding innovation and growth duty for all digital regulators, and a transformation of impact assessments;
- iii. a **comprehensive overhaul of enforcement**, addressing the fragmentation, innovation-aversion, and inconsistency that undermine the Single Market;

¹ McKinsey & Company. (2025, May 21). Tech, media, and telecom spur Europe's comeback. <https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/technology-media-and-telecom-in-europe-the-new-growth-engine-or-another-decade-of-missing-out>

² Draghi, M. (2024). The future of European competitiveness – A competitiveness strategy for Europe (Part A) and In-depth analysis and recommendations (Part B). European Commission. Published September 9, 2024

³ The Conference Board & European Round Table for Industry (ERT). (2025, December). The Conference Board Measure of CEO Confidence for Europe by ERT: CEO Confidence Still Wavering, Investments Stalled, EU Reforms in the Spotlight.

- iv. **halting the pipeline of new digital legislation** — including the Digital Fairness Act — until the existing framework has been properly reviewed and reformed; and
- v. **specific revisions** for each of the key legislative files within the digital acquis.

3. Our submission is informed by Meta’s direct experience of the EU regulatory environment, including significant product delays, feature limitations, and services never launched in Europe. But our argument extends well beyond Meta. We draw on evidence from across the technology sector and the broader European economy, including the experiences of European businesses and SMEs, and companies such as Apple, Google, and OpenAI, as well as authoritative third-party sources including the Draghi Report, the Stanford HAI AI Index, ITIF, the OECD, BusinessEurope, SMEUnited, the European Investment Bank, the European Ombudsman, the EU Tech Alliance, the National Bureau of Economic Research, and the European Central Bank.

4. The Digital Fitness Check is the last credible opportunity to bring the simplification agenda back on track. We urge the Commission to seize it with the ambition and courage that Europe’s citizens, businesses, and future demand.

1 | Introduction - the case for reform

5. Europe is at a critical turning point. As the United States and China surge ahead in artificial intelligence and digital innovation, Europe is rapidly falling behind. The gap is accelerating, and Europe is on track to be overtaken by new digital hubs such as India and the UAE. This is no longer a technical policy concern; it is a direct threat to Europe’s economic strength, social model, and geopolitical relevance. AI is the defining economic opportunity of this decade; one that a growing consensus believes Europe will lose if it does not change course.^{4 5 6 7 8 9 10}

⁴ Emmanuel Macron, President of France: “If we regulate before we innovate, we won’t have innovation in Europe” Interview with France 2, 9 February 2025.

⁵ Ulf Kristersson, Prime Minister of Sweden: “If we don’t change...Europe will actually become some kind of a museum...Europe needs to become a place where business and innovation can thrive. That means less regulation.” Speech at Techarena, Stockholm, 20 February 2025. Reported by CNBC.

⁶ Roland Busch, CEO of Siemens: “We are sitting on a treasure trove of data in Europe, but we are not yet able to tap into it...Europe is falling behind.” Christian Klein, CEO of SAP: “We need to reform data access rules.” Joint interview with Frankfurter Allgemeine Zeitung, 13 July 2025, reported by Reuters.

⁷ Philippe Aghion, 2025 Nobel Laureate in Economics (awarded for pioneering research into the relationship between technological innovation and long-term economic growth): “We regulate too much, but we don’t invest enough.” Interview with Euronews, 3 December 2025.

⁸ Tony Blair Institute for Global Change (paper signed by former Prime Ministers Tony Blair (UK), Sanna Marin (Finland), and Matteo Renzi (Italy)): “The current [regulatory] approach discourages high-risk innovation and leaves European firms at a disadvantage.” Europe in the Age of AI: How Technology Leadership Can Boost Competitiveness and Security, 17 November 2025.

⁹ RAND Europe: “On its present trajectory, Europe will have little say over how this technology is built or governed... The window for securing AI competitiveness is a matter of years, not decades.” Published in Economist Impact, 22 February 2026.

¹⁰ International Monetary Fund: “Regulation will need to be...calibrated. Reaping the full potential of AI depends on policy choices that Europe makes today.” IMF Blog, “How Europe Can Capture the AI Growth Dividend”, 20 November 2025.

6. The Commission seems to be alive to this, and is clear in its stated goals that it has the *ambition* to foster a thriving, competitive tech sector in the EU. We welcome this ambition, but only through action can this brighter future come to pass — it is in the spirit of achieving this shared goal that we offer the following analysis.

7. **Still no Digital Single Market.** Businesses operating in the EU continue to be faced with persistent barriers to cross-border trade — 61% of barriers identified in 2002 still existed in 2020.¹¹ European Parliament research from 2022 estimated that dismantling remaining barriers to the single market could yield between €507 billion and €829 billion in additional GDP annually.¹² While European households save more than their US counterparts, €300 billion of these savings flow abroad each year, primarily into US high-tech companies, because the fragmented, innovation-restricting European market prevents the emergence of homegrown champions.¹³

8. **The productivity gap is widening.** Thirty years ago, EU labour productivity was close to parity with the United States, at approximately 95%. That small gap has grown into a chasm, with EU productivity now falling below 80% of the US level. The critical difference is the technology sector. Excluding technology, EU productivity growth over the past twenty years would be broadly on par with the United States.¹⁴ As former European Central Bank President Mario Draghi warned in his landmark 2024 report into EU competitiveness, “*radical change*” is needed to Europe’s regulatory approach.^{15 16}

9. **Europe is losing the investment race.** EU-funded research found that between 2020 and 2025, the United States dedicated 34% of its €1.33 trillion in venture capital funding to AI; the EU allocated just 18% of €252 billion — a tenfold difference in absolute AI investment. Even within Europe, most late-stage capital comes from the US and UK.¹⁷ The EU is not producing notable AI

¹¹ Analysys Mason. (2024, September). Recalibrating policy for digital platforms in the EU Digital Single Market. https://www.analysismason.com/contentassets/e42572f4e1074a84822c8afd3f91a08c/analysys_mason_recalibrating_policy_for_digital_platforms_eu_dsm_sep2024.pdf

¹² European Parliament Research Service (EPRS). (2022, July). Completing the single market for goods (Briefing PE 730.320) and Completing the single market for services (Briefing PE 730.311). [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/730320/EPRS_BRI\(2022\)730320_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/730320/EPRS_BRI(2022)730320_EN.pdf) and [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/730311/EPRS_BRI\(2022\)730311_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/730311/EPRS_BRI(2022)730311_EN.pdf)

¹³ Analysys Mason. (2024, September). Recalibrating policy for digital platforms in the EU Digital Single Market. https://www.analysismason.com/contentassets/e42572f4e1074a84822c8afd3f91a08c/analysys_mason_recalibrating_policy_for_digital_platforms_eu_dsm_sep2024.pdf

¹⁴ McKinsey & Company. (2025, September 18). To unleash productivity growth in Europe, rewire your operations. <https://www.mckinsey.com/capabilities/operations/our-insights/to-unleash-productivity-growth-in-europe-rewire-your-operations>

¹⁵ Draghi, M. (2024). The future of European competitiveness – A competitiveness strategy for Europe (Part A) and In-depth analysis and recommendations (Part B). European Commission. Published September 9, 2024

¹⁶ Draghi, M. (2024, April 16). Radical Change — Is What Is Needed. Speech at the High-level Conference on the European Pillar of Social Rights, Brussels. Published by Groupe d'études géopolitiques. <https://geopolitique.eu/en/2024/04/16/radical-change-is-what-is-needed/>

¹⁷ EU-funded StepUp StartUps Consortium. (2025, November 5). Funding the AI Economy: Strengthening Europe's Investment Capacity. European Commission, Directorate-General for Communications Networks, Content and Technology. Available at: <https://digital-strategy.ec.europa.eu/en/library/funding-ai-economy-strengthening-europes-investment-capacity>

models: in 2024, the US accounted for 40, China for 15, and the EU just 3; in 2025, the EU contributed only 1.^{18 19} Research published by the National Bureau of Economic Research found that the volume of US venture capital investments in Europe dropped more than 20% following the implementation of the GDPR.²⁰ The European Commission’s own 2025 Digital Decade Report acknowledged that Europe is failing to meet its digital targets — “*several key domains – particularly foundational digital technologies such as AI, cloud services, data analytics, along with ICT specialists and basic digital skills – are showing deeply unsatisfactory progress*”. Cloud uptake among businesses remains low at ~50%, while AI has been adopted by fewer than one in five.²¹

10. **The patent gap tells the same story.** In 2024, China filed nearly half of all patents worldwide, with approximately 1.8 million applications. The United States followed with 501,831 applications. Germany, Europe’s leading patent filer, managed only 133,485 — just 7.4% of China’s total and 26.6% of the US figure. In AI-related patents, the disparity is even starker: Europe filed close to 10% of AI patents in 2010, but the latest figures show that it’s plummeted to less than 3% of all AI patents. This figure is inflated by the inclusion of the UK, which leads Europe’s AI patent filings — so the EU’s share is actually significantly lower.²² Among the top 10 global PCT filers, eight are located in Asia; no European company appears in the top five.²³

11. **Europe’s own leaders recognise the crisis.** The European Tech Alliance (EUTA), which represents 36 of Europe’s leading home-grown tech companies including Spotify, Booking.com, and Zalando, publicly called on the EU to “*scrap obsolete rules, stop layering new ones, and deliver smarter regulation that unlocks growth*.”²⁴ The 60+ companies of the cross-industry EU AI Champions Initiative — including Airbus, ASML, AXA, BNP Paribas, Carrefour, and Dassault Systèmes — have called for “*a decisive pivot toward a more proportionate, innovation-friendly regulatory approach*”.²⁵ Twenty Member States wrote to the President of the European Council demanding a systematic review of all EU regulations to identify rules that are “superfluous, excessive, or unbalanced” and to examine whether the digital acquis is fit for the Union’s

¹⁸ Stanford University Institute for Human-Centered Artificial Intelligence. (2025). Artificial Intelligence Index Report 2025. <https://aiindex.stanford.edu/report/>

¹⁹ Epoch AI, Notable AI Models Database (last updated 3 March 2026). Available at: <https://epoch.ai/data/ai-models>.

²⁰ Jia, J., Jin, G. Z., Leccese, M., & Wagman, L. (2025, June). How Does Privacy Regulation Affect Transatlantic Venture Investment? Evidence from GDPR. National Bureau of Economic Research Working Paper No. 33909.

²¹ European Commission. (2025). 2025 Report on the state of the Digital Decade. <https://digital-strategy.ec.europa.eu/en/library/state-digital-decade-2025-report>

²² Stanford University Institute for Human-Centered Artificial Intelligence. (2025). Artificial Intelligence Index Report 2025. <https://aiindex.stanford.edu/report/>

²³ World Intellectual Property Organization. (2025). World Intellectual Property Indicators 2025. <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-941-2025-en-world-intellectual-property-indicators-2025.pdf>

²⁴ European Tech Alliance. (2026). A CEO Call for Smarter EU Tech Regulation. Retrieved from <https://eutechalliance.eu/ceo-call-to-action/>

²⁵ EU AI Champions Initiative. (2025). Stop the Clock: An Open Letter to the European Commission. Available at: <https://aichampions.eu/>

competitiveness goals.²⁶ Addressing the difficulty of businesses to succeed in Europe, Prime Minister Michal of Estonia put it succinctly — “*Europe has too many rules*”.²⁷ The message from both industry and governments is unequivocal: Europe’s current digital rulebook is undermining its ability to compete.

12. **The European Commission’s own Annual Single Market and Competitiveness Report (2026) confirms** that regulatory complexity remains a binding constraint on European firms. SMEunited has responded to this report by deploring a “Single Market at a standstill,” noting that small and medium-sized enterprises — the backbone of the European economy — are disproportionately burdened by cumulative compliance obligations.²⁸

1.1 | Innovation delayed is innovation denied

13. The consequences of regulatory overreach are not abstract. They manifest in products never launched, features withheld, and services degraded for European citizens and businesses. Meta’s own experience illustrates this pattern:

- **Meta AI assistant:** Regulatory uncertainty forced Meta to delay launching its AI assistant in the EU by nearly 18 months, due to the evolving and uncertain regulatory environment. When it finally launched in March 2025, European users received a reduced feature set — text-based chatbot functionality only, without the visual AI features available elsewhere in the world.²⁹
- **AI glasses (Meta Ray-Ban):** Meta delayed introducing its Meta AI chatbot on Ray-Ban Meta AI glasses across Europe by one year due to the unpredictable nature of the European regulatory environment.
- **Meta Quest in Germany:** A lengthy antitrust dispute over account-linking requirements led Meta to voluntarily suspend sales of Meta Quest headsets in Germany for two years (2020–2022), depriving German consumers of access to one of the world’s leading virtual reality platforms.
- **AI training with first-party data:** In 2024, when Meta publicly announced plans to use certain public first-party data for training AI, pushback from activist group NOYB and the Irish Data Protection Commission led to a referral to the European Data Protection Board. After months of deliberation, the EDPB ultimately approved the same legal mechanism Meta had originally proposed. This entirely avoidable outcome

²⁶ Letter from 20 Member States [Ireland signed later] to the European Commission on Better Regulation. (2025, October 15).
https://www.politico.eu/wp-content/uploads/2025/10/22/0ca0f5da-ea43-4b1b-82a5-fda29587e0e5-211025_Letter-PEC-Simplification_final.pdf

²⁷ Michal, K. (2026, February 15). Remarks at the panel discussion “All the Single Markets: From Fragmentation to Competitiveness,” Munich Security Conference 2026. Video available at:
<https://www.youtube.com/watch?v=H66jHeDrUng>

²⁸ SMEunited. (2026, Feb 3). Single Market 2026 report: SMEs deplore a Single Market at a standstill.
<https://www.smeunited.eu/news/single-market-2026-report-smes-deplore-a-single-market-at-a-standstill>

²⁹ Meta Platforms, Inc. (2025, March 19). Bringing Meta AI to Europe.
<https://about.fb.com/news/2025/03/europe-meet-your-newest-assistant-meta-ai/>

delayed Europeans from accessing the latest AI technology for a whole year and stoked technology mistrust affecting the whole AI ecosystem in the EU.^{30 31}

- **Business messaging:** GDPR and the outdated ePrivacy regulations significantly constrain the marketing analytics available to businesses in Europe, limiting their ability to understand and reach customers effectively. The result is a less dynamic digital economy where both businesses and consumers lose out — business messaging products in Europe are systematically less optimised than those outside the EU.
- **Child safety:** Current ePrivacy rules prevent providers from proactively scanning content in non-encrypted messaging services, even to detect high-severity harms such as child solicitation and sextortion. The perverse result is that EU citizens receive fewer safety protections than the rest of the world.
- **Political and social issue advertising:** The EU's Transparency and Targeting of Political Advertising (TTPA) regulation introduced such extensive restrictions on ad targeting and delivery that we, like other platforms, were forced to withdraw political, electoral, and social issue advertising in the EU. The direct result of the TTPA is that EU citizens, candidates, and civil society organisations have lost access to a cost-effective channel for democratic engagement.
- **Personalised advertising:** The European Commission's expansive and incorrect interpretation of Article 5(2) DMA, including its interpretation of GDPR consent within that DMA obligation, has ultimately demanded an unnecessary change to how users access our products and services in the EEA. We have been compelled to offer less personalised ads: ads that are far less relevant to users compared to personalised ads. This results in poorer outcomes for advertisers (be they charities, businesses, or public services), our users, and European economies. In 2024, in the EU alone, our personalised advertising tools were linked to €213 billion in economic activity and 1.44 million jobs.³² The Commission's decision did not take into account the clear impact on growth and innovation that it would have, disproportionately hurting those small businesses hoping to start and grow in Europe. Users, meanwhile, complain of a decline in the quality of the adverts they see — rather than the continuous improvements in technology they've come to expect. 39% of EU consumers reported a worse experience of personalised adverts following the implementation of the DMA.³³ Our own data supports this, with an almost 800% increase in LPA users

³⁰ Meta Platforms, Inc. (2024, June 10). Building AI Technology for Europeans in a Transparent and Responsible Way. <https://about.fb.com/news/2024/06/building-ai-technology-for-europeans-in-a-transparent-and-responsible-way/>

³¹ Clegg, N. (2024, December 20). When it comes to making AI available to Europeans, EU regulators are still moving at a snail's pace. Le Monde. Available at: https://www.lemonde.fr/en/opinion/article/2024/12/20/nick-clegg-when-it-comes-to-making-ai-available-to-europeans-eu-regulators-are-still-moving-at-a-snail-s-pace_6736309_23.html

³² Meta Platforms, Inc. (2025, May). Meta's Personalized Ads Boost Europe's Economy: €213 Billion in Value and Almost 1.5 Million Jobs. Meta Newsroom. Available at: <https://about.fb.com/news/2025/05/metas-personalized-ads-boost-europes-economy-e213-billion-in-value-and-almost-1-5-million-jobs/>

³³ Nextrade Group. (2025, September). Impact of the DMA on EU consumers. <https://www.nextradegroupplc.com/impact-of-the-dma-on-eu-consumers>

dismissing ads for being “irrelevant” or “repetitive” compared to users receiving personalised ads.³⁴

14. Meta is far from alone. The pattern of delayed or degraded service extends across the technology sector:

- **Apple:** Apple Intelligence features were launched in October 2024 in the US, but EU users were forced to wait until March 2025 due to regulatory pressures from the DMA and GDPR. AirPods live translation was blocked from the EU at launch in September 2025 due to DMA requirements. Apple executive Greg Joswiak stated that EU regulators “*want to take the magic away*” by undermining the company's tightly integrated user experience.³⁵
- **Google:** AI Overviews launched in the US in May 2024, and the UK three months later. Even one year on from its US launch, regulatory uncertainty meant only a handful of EU Member States had access. A feature-limited version of AI Mode launched in the EU only in October 2025. The Pixel Screenshot feature remains limited to only a small number of EU markets.
- **OpenAI:** Sora, OpenAI's video generation tool, launched in December 2024, but it was almost three more months until EU users would be able to access it.
- **European SMEs:** A survey by the ACT App Association of over 1,000 tech startups, scaleups, and SMEs found that EU firms lose between €26,000 and €53,000 in average annual revenue per firm from regulatory delays, with directly affected firms losing €92,000 to €185,000 annually. The total annual impact per business ranges from €94,000 to €455,000.³⁶
- **“Made in EU” also “Delayed in EU”.** Even European-born innovations launch elsewhere first. Spotify launched its AI DJ feature in North America in February 2023, but it took six months for the same service to be available in Sweden, Spotify's home market. Sweden was one of only three EU countries to have access, compared to 48 from outside the EU.³⁷ While Booking.com, headquartered in the Netherlands, deployed its AI Trip Planner in the United States two years before making it widely available in the EU.³⁸ That these champion European companies would choose / be forced to launch a product in the US before their home market is a striking indictment of the EU's regulatory environment.

15. Even when products do reach the European market, they are frequently launched with features removed or functionality narrowed to reduce compliance risk. Google Search results in

³⁴ Lamb, T. (2025, July 2). Why the Commission's Decision Undermines the Goals of the DMA. Meta Newsroom. Available at: <https://about.fb.com/news/2025/07/why-the-commissions-decision-undermines-the-goals-of-the-dma/>

³⁵ Nield, D. (2025, September 22). “*They want to take the magic away*”: Apple says EU is killing innovation and creating a worse experience for tech fans – here's why. TechRadar. <https://www.techradar.com/computing/they-want-to-take-the-magic-away-apple-says-eu-is-killing-innovation-and-creating-a-worse-experience-for-tech-fans-heres-why>

³⁶ ACT | The App Association. (2025, October). The Hidden Cost of AI Regulations: A Survey of EU, UK, and U.S. Companies. <https://actonline.org/the-hidden-cost-of-ai-regulations-a-survey-of-eu-uk-and-u-s-companies/>

³⁷ Spotify. (2023, August 8). Spotify Expands DJ to Now Be Available in 50 Markets Around the World.

³⁸ Booking.com. (2023, June 27). Booking.com Launches New AI Trip Planner; Booking.com. (2025, October 9). Booking.com Debuts Agentic AI Innovations.

the EU are a prime example; to comply with the Digital Markets Act (DMA), Google was forced to remove integrated map results, making it harder for users to find what they are looking for and degrading the overall search experience.^{39 40} A recent survey of 5,000 EU consumers found that two-thirds feel they now have to search longer for relevant content, with 35% reporting a decline in the quality of map services specifically.⁴¹

16. This is not an isolated case. Apple has been forced to withhold several new features from the EU, including iPhone Mirroring and advanced Apple Intelligence capabilities, because of the DMA's requirements.^{42 43} The pattern is clear across the industry: from Google's AI Overviews to Meta's own AI-powered features, the most innovative products are consistently delayed or degraded in Europe due to regulatory hurdles.⁴⁴

17. These impacts faced by companies big and small are not outliers. They are symptoms of a systemic 'First-Mover Penalty'. While the US operates on a model of 'permissionless innovation,' the EU's 'precautionary' approach creates months-long administrative lag. This effectively renders European digital products at best outdated, and at worst obsolete, before they can reach the Single Market, and keeps European citizens and businesses one step behind their global peers. 2025 survey evidence from the App Association, ACT confirms this pattern at scale: European AI developers are 34% more likely to report regulatory delays to their AI product development than their US counterparts. The cited causes of Europe's outsized regulatory delay included compliance and approval processes, data privacy requirements, and regulatory uncertainty.⁴⁵

1.2 | A depleted innovation ecosystem

18. The harm inflicted goes beyond delay. Founders, innovators, and entrepreneurs increasingly find Europe to be an unwelcome environment. Approximately 30% of EU unicorns

³⁹ ITIF. (2025, June 30). Six Ways the DMA Is Backfiring on Europe by Harming Users, Innovation, and Allies. <https://itif.org/publications/2025/06/30/six-ways-the-dma-is-backfiring-on-europe/>

⁴⁰ Google. (2025, March 19). The EU's competition rules are hurting consumers and businesses. <https://blog.google/company-news/inside-google/around-the-globe/google-europe/the-eus-competition-rules-are-hurting-consumers-and-businesses/>

⁴¹ Nextrade Group. (2025, September). Impact of the DMA on EU consumers. <https://www.nextradegrouppllc.com/impact-of-the-dma-on-eu-consumers>

⁴² Apple. (2025, September 24). The Digital Markets Act's impacts on EU users. <https://www.apple.com/newsroom/2025/09/the-digital-markets-acts-impacts-on-eu-users/>

⁴³ The Guardian. (2024, June 21). Apple delays launch of AI-powered features in Europe, blaming EU rules. <https://www.theguardian.com/technology/article/2024/jun/21/apple-ai-europe-regulation>

⁴⁴ Euronews. (2025, April 1). Google's AI feature on hold in most EU member states due to 'strict rules'. <https://www.euronews.com/next/2025/04/01/googles-ai-feature-on-hold-in-most-eu-member-states-due-to-strict-rules>

⁴⁵ Technometrica for ACT | The App Association. (2025, September). EU & U.K. 2025 Small Tech Business AI Survey Findings: Adoption, Benefits, and Opportunities; U.S. 2025 Small Tech Business AI Survey Findings: Adoption, Benefits, and Opportunities.

relocated outside the EU between 2008 and 2021.⁴⁶ This innovation exodus is exemplified by the 2025 US / UAE relocation of Dutch cloud-communications unicorn Bird. CEO Robert Vis explicitly attributed the move to the EU's 'overregulated' landscape — citing the EU AI Act and restrictive employment laws — stating that Europe 'lacks the environment we need to innovate in an AI-first era'.⁴⁷

19. Bird is not an isolated case. Atomico's State of European Tech 2025 report found that 18% of companies with seasoned European founders chose to establish in the United States in 2025, almost double the number in 2016.⁴⁸ Critically, the report found that founders who view Europe's regulatory environment as restrictive are significantly more likely to relocate — a direct causal link between regulatory burden and talent flight. This is exemplified by Peter Steinberger, the Austrian creator of the watershed agentic AI product, OpenClaw. Steinberger recently left Europe for OpenAI in the United States, citing strict regulations and a cultural environment where enthusiasm for building is replaced by lectures on compliance.⁴⁹

20. The Information Technology and Innovation Foundation (ITIF) has documented how EU regulatory actions function as de facto tariffs on technology companies, with fines against US tech firms escalating from \$2.03 billion in 2023 to \$6.7 billion in 2024.⁵⁰ BusinessEurope's regulatory burden mapping found that over 60% of EU companies and 55%⁵¹ of SMEs cite regulatory burden as their greatest challenge.

21. The scale of the problem is staggering: a 2025 study by the Danish Council Presidency, aggregating the European Commission's own impact assessments, estimated that incoming EU legislation still under negotiation *alone* could impose more than €124 billion in additional annual compliance costs on businesses and public administrations.⁵² At company-level, the burden is already extreme. European technology companies complain that up to 30% of their resources can

⁴⁶ European Investment Bank, Drivers of Relocation by Innovative EU Startups and Scaleups (January 2026), ISBN 978-92-861-6061-5. Available at: <https://www.eib.org/en/publications/20250217-drivers-of-relocation-by-innovative-eu-startups-and-scaleups>. See also European Commission, EU Startup and Scaleup Strategy (August 2025)

⁴⁷ Thomas Macaulay, Dutch unicorn Bird flees 'overregulated' Europe for 'global hubs' — and a meditation retreat, THE NEXT WEB (Feb. 24, 2025), <https://thenextweb.com/news/dutch-unicorn-bird-leaving-eu-due-to-ai-regulations>

⁴⁸ Atomico. (2025, November). State of European Tech 25. Available at: <https://www.stateofeuropeantech.com>

⁴⁹ Barr, A. (2026, February 18). OpenClaw creator slams Europe's regulations as he moves to the US. Business Insider. <https://www.businessinsider.com/openclaw-creator-slams-europe-regulations-move-us-openai-2026-2>

⁵⁰ Information Technology and Innovation Foundation. (2025, April 28). How EU Regulatory Actions Function as De Facto Tariffs on U.S. Tech Companies. <https://itif.org/publications/2025/04/28/de-facto-eu-tariff-system/>

⁵¹ BusinessEurope. (2025). Reducing Regulatory Burden to Restore the EU's Competitiveness. <https://www.businesseurope.eu/publications/reducing-regulatory-burden-to-restore-the-eus-competitive-edge/>

⁵² Danish Presidency of the Council of the EU (2025). Analysis of compliance costs of incoming EU legislation. As reported in: "Denmark warns new EU red tape could cost €124bn a year," Financial Times, 14 September 2025. <https://www.ft.com/content/850845d0-f383-4971-a425-28d6824887ee>

be taken up by regulatory compliance costs — resources that could otherwise be directed toward product innovation and growth.^{53 54}

22. The cumulative effect of the EU's approach is shaping the entire AI ecosystem to Europe's disadvantage. As of mid-2025, approximately three-quarters of global GPU cluster capacity — the computational infrastructure underpinning AI model development — was located in the United States, with just 5% in Europe.⁵⁵ The EU's share of global venture capital investment in AI over the past six years amounts to roughly one-tenth of America's.⁵⁶ Very few of the world's leading frontier AI models were developed in Europe, and European data centres are increasingly confined to the less strategically valuable task of inference rather than the frontier work of model training.⁵⁷

23. The consequences extend into the workplace. North American employees are more than twice as likely as their European counterparts to report that AI is integrated into their organisation.⁵⁸ These deficits are self-reinforcing. Less demand for AI in Europe means less justification to build models here, which means less investment in computational infrastructure, which means fewer AI-skilled workers — a vicious cycle that regulation is accelerating. As European Central Bank President Christine Lagarde warned in November 2025: *“With the United States and China ahead of the field, Europe has already missed the opportunity to be a first mover in AI. And we still bear the costs of having been slow adopters during the last digital revolution. We cannot afford to make the same mistake again.”*⁵⁹

24. These challenges will intensify. The emergence of AI-assisted / agentic software development is democratising application creation. The distance between an idea and a working product is rapidly collapsing. Applications that once cost tens of thousands of euros to build can now be created for a fraction of that. But the fixed costs of regulatory compliance remain unchanged. If building an application costs €50 but achieving regulatory compliance costs €500, regulation becomes the decisive barrier preventing new applications from reaching the market.

1.3 | The Omnibus does not go far enough

⁵³ European Tech Alliance European Tech Summit 2025.

<https://eutechalliance.eu/european-tech-companies-face-an-overwhelming-amount-of-rules-harming-their-ability-to-grow-and-compete/>

⁵⁴ Politico (2026, January 9) This European tech champion has had it with new EU rules. Adam Jay, CEO of Vinted, “30 per cent of the company’s capacity to develop and deploy new technologies goes into compliance.”

⁵⁵ Epoch AI. (2025, June 5). AI supercomputers performance share by country. Available at: <https://epoch.ai/data-insights/ai-supercomputers-performance-share-by-country>

⁵⁶ StepUp StartUps Consortium. (2025, November 5). Funding the AI Economy: Strengthening Europe's Investment Capacity. European Commission, Directorate-General for Communications Networks, Content and Technology. Available at: <https://digital-strategy.ec.europa.eu/en/library/funding-ai-economy-strengthening-europes-investment-capacity>

⁵⁷ Stanford University Institute for Human-Centered Artificial Intelligence. (2025). AI Index Report 2025

⁵⁸ Perceptyx. (2025, October 16). Beyond the Hype: Global Employee Perspectives on Generative AI.

⁵⁹ European Central Bank. (2025, November 24). The transformative power of AI: Europe's moment to act. Speech by Christine Lagarde. Available at: https://www.ecb.europa.eu/press/key/date/2025/html/ecb.sp251124_1~c239fb4a7f.en.html

25. The European Commission’s Digital Omnibus proposals of 19 November 2025 take steps toward simplification, but fall far short of the ambition that industry leaders and Heads of State have clearly called for. Incremental tweaks to the EU AI Act, GDPR, or ePrivacy Directive cannot compensate for a structurally flawed approach to legislation that piles complexity on top of complexity while other regions create conditions for scale, investment, and innovation.

26. In their respective responses to the Digital Fairness Act consultation, EU tech champions including Wolt, Ryanair, Vinted, and Spotify raised concerns about over-regulation, urging a focus on implementation rather than adding new rules.⁶⁰ The Digital Fitness Check must be the vehicle for that paradigm shift.

2 | Structural reform - building the foundations for a competitive Europe

27. The EU’s competitiveness crisis cannot be resolved by amending individual legislative files alone. It requires systemic reforms to the way regulation is conceived, assessed, and enforced. Innovation must be embedded throughout the policy development and regulatory decision making structures of the EU. Commission leadership needs to send a strong signal to industry, and most importantly its own officials, that growth and innovation must never be an afterthought; that *threats* to innovation must be minimised, and *opportunities* maximised.

28. Two structural changes must take priority to help make this a reality: 1 - embedding innovation and growth as binding regulatory duties, and 2 - transforming impact assessments into rigorous, evidence-based instruments.

2.1 | Making growth and innovation a binding regulatory duty

29. The EU must introduce a binding “innovation and growth duty” for all regulators involved in the digital economy. This is not about weakening fundamental rights protections. It is about ensuring that regulators are required — and held accountable — to balance their protective mandates with a commitment to fostering innovation, investment, and economic growth.

30. The United Kingdom provides a compelling model. Under the UK’s Deregulation Act 2015, regulators such as Ofcom, the Information Commissioner’s Office (ICO), and the Financial Conduct Authority (FCA) have a legal duty to “have regard to the desirability of promoting economic growth” when exercising their regulatory functions.⁶¹ The UK Government’s Growth Duty: Statutory Guidance (refreshed in May 2024) identifies seven “Drivers of Economic Growth” and seven “Behaviours of Smarter Regulation” that regulators must consider. This includes:⁶²

⁶⁰Markeviciute, E. (2025, October 31). What do Europeans have to say about the Digital Fairness Act?. Euronews. <https://www.euronews.com/next/2025/10/31/what-do-europeans-have-to-say-about-the-digital-fairness-act>

⁶¹ UK Government. (2015). Deregulation Act 2015. <https://www.legislation.gov.uk/ukpga/2015/20/contents>

⁶² UK Government. (2024, May). Growth Duty: Statutory Guidance. <https://www.gov.uk/government/publications/growth-duty-statutory-guidance>

- **Promoting innovation:** Regulators are empowered to choose more innovative options that might otherwise have been discounted.
- **Supporting trade:** Regulatory decisions must consider the impact on international competitiveness.
- **Minimising compliance burdens:** Regulators should adopt a pro-growth approach that minimises unnecessary costs on businesses.

31. This leadership does not only show up in legislative articles. The UK Government has repeatedly, consistently, and very publicly issued clear strategic direction to its regulators that they must support the UK's growth ambitions. The Strategic Steer to the Competition and Markets Authority (CMA) is a telling example — demanding that the CMA must “support and contribute to the overriding national priority of this government — economic growth.” This provides an unambiguous, top-down signal that regulators must balance their protective duties with a commitment to fostering a competitive and innovative economy.

32. The UK's 2025 Data Use and Access Act went further — giving the ICO an explicit innovation duty. In doing so, the government has forced the regulator to acknowledge and optimise its choices in data protection to ensure that innovation is at least *protected*, and ideally *promoted*. A formal acknowledgement that data protection and innovation are not mutually exclusive — they are complementary objectives that can and must coexist within a single regulatory framework.

33. But this is not just a British model — it has long been marbled through the European regulatory framework, across multiple sectors, and is actively enforced by national and European courts.

- In **telecoms**, the principle is enshrined in the European Electronic Communications Code (EECC), the cornerstone of EU digital infrastructure regulation. Article 3 of the EECC requires all National Regulatory Authorities (NRAs) not only to promote competition and the interests of citizens, but also to “promote efficient investment and innovation in new and enhanced infrastructures.”
- In **energy**, the same principle is embedded in national regulatory frameworks across the EU. Portugal's energy regulator, ERSE, is required “*ensure the existence of a stable and transparent regulatory framework that promotes investment and innovation in the regulated sectors.*” Latvia's SPRK has a duty to “promote research in the field of energy...that contributes to the creation of new technologies and solutions.” Lithuania's Law on Energy explicitly mandates the “formation of legal and economic conditions favourable for investments” and the “promotion of competition and private capital participation in order to increase economic efficiency.”
- In **financial services**, Portugal's securities regulator, the CMVM, has a binding duty to “*promote financial innovation, without prejudice to the security and protection of investors*” — a formulation that explicitly recognises innovation and investor protection as complementary, not competing, objectives. Romania's ASF must “*ensure the stability, competitiveness and proper functioning of the financial instruments markets.*” France's AMF is tasked with ensuring the proper functioning and transparency of markets in a way that protects investment.

34. These duties matter. Spain's CNMC fully deregulated its wholesale fibre market in 2025, justifying the decision on the investment duty under the EECC. In France, the Paris Court of Appeal upheld ARCEP's decision against Orange, finding that overcharging “only serves to impede, to everyone's detriment, investment and motivation for technological progress.” And a landmark judgment from the Court of Justice of the European Union (CJEU) in November 2025 settled any doubt about whether these duties can be anything other than afterthoughts. In Case C-327/24 (Telekom Deutschland v Germany), the Court ruled that NRAs must consider all of the duties imposed on them, with “no order of priority,” when developing regulatory interventions. The CJEU confirmed that promoting investment and innovation is a legally binding duty that regulators can and will be held accountable for — and that a failure to consider it can be grounds for overturning a regulatory decision.

2.2 | Transforming impact assessments - from process to performance

35. The quality of EU legislation is only as good as the evidence underpinning it. OECD research shows that the adoption of regulatory impact assessments has been “*linked to improvements in economic welfare, particularly when subject to independent external scrutiny.*”⁶³ In the United States, the Office of Information and Regulatory Affairs (OIRA) — established in 1981 — has served as the institutional embodiment of this principle, requiring rigorous cost-benefit analysis before any major regulation can proceed.⁶⁴ But, according to the OECD, the EU's approach to impact assessments is instead a driver of “persistent” regulatory burden on European companies.⁶⁵

36. Too often new EU regulations are proposed without this robust evidence base, leading to poorly designed rules that create legal uncertainty and stifle innovation. The Commission's own Better Regulation Guidelines were designed to prevent this, but they have faced an uphill battle on three fronts.

37. First, even when the Guidelines are followed, the process is too insular. Stakeholder consultations are frequently treated as a procedural formality rather than a genuine and sincere exercise in evidence-gathering. As Bruegel has noted, the Commission's approach to consultation often fails to engage meaningfully with the businesses and citizens who will bear the costs of new regulation.⁶⁶ A genuine commitment to open, inclusive policymaking — one that treats affected stakeholders as partners in evidence-gathering, not as an afterthought — is needed.

⁶³ OECD. (2025, December 2). “Time for a Regulatory Reset?” Chapter 2 of OECD Economic Outlook, Volume 2025 Issue 2. URL: https://www.oecd.org/en/publications/2025/12/oecd-economic-outlook-volume-2025-issue-2_413f7d0a/full-report/time-for-a-regulatory-reset_90ca6147.html

⁶⁴ Executive Office of the President. (1981, February 17). Executive Order 12291 — Federal Regulation. Federal Register, 46 FR 13193. Available at: <https://www.archives.gov/federal-register/codification/executive-order/12291.html>

⁶⁵ OECD. (2025). Better Regulation Practices across the European Union 2025. Available at: https://www.oecd.org/en/publications/better-regulation-practices-across-the-european-union-2025_6f007516-en/

⁶⁶ Bruegel, “Better regulation in the EU needs a fresh start” (Bucher & Golberg), 26 January 2026. <https://www.bruegel.org/policy-brief/better-regulation-european-union-needs-fresh-start>

38. Second, impact assessments are not updated through the passage of an act. Impact assessments are a snapshot in time, conducted only at the very beginning of the legislative journey. The Commission's impact assessment on its initial proposal becomes increasingly irrelevant as the text is substantially amended by the co-legislators. The final law that emerges from trilogue negotiations can be profoundly different from the one that was originally assessed, yet it is not subject to any further impact assessment. This creates a critical evidence gap. The OECD found that while the 2016 Interinstitutional Agreement on Better Law-Making recognised the importance of impact assessments for substantial amendments, its "implementation remains wanting." The European Parliament rarely uses its capacity to commission impact assessments on its amendments, and the Council has never prepared its own.⁶⁷ This stands in stark contrast to the United Kingdom, where an "enactment IA" is required if a bill is significantly amended during its passage through Parliament, ensuring the final law is still grounded in evidence.⁶⁸ Without a similar mechanism, the EU's legislative process remains exposed to a significant democratic and evidence deficit. Bruegel recently called for a new inter-institutional mechanism to close this gap, one that would "assess the impact of amendments using the Commission's impact assessment methodology" and "identify how the impacts of *adopted* laws differ from those foreseen at the *proposal* stage."⁶⁹

39. Third, the Guidelines are not mandatory. At worst they are routinely ignored, at best they are selectively applied. The Commission's own Regulatory Scrutiny Board (RSB) delivers negative opinions on approximately 40% of impact assessments submitted to it. The RSB cites recurring failures in problem definition, proportionality, and the assessment of options.⁷⁰ Most impact assessments fail to fully estimate costs, and more still fail to quantify benefits.⁷¹ The European Parliament found that in 2022 a staggering 58% of impact assessments provided insufficient evidence to justify the proposed legislation.⁷²

40. A striking example is the Corporate Sustainability Due Diligence Directive (CSDDD), which was allowed to proceed to adoption despite receiving two negative RSB opinions.⁷³ In other cases, the Commission has failed to conduct impact assessments entirely, treating compliance with its

⁶⁷ OECD. (2025). Better Regulation Practices across the European Union 2025. Available at: https://www.oecd.org/en/publications/better-regulation-practices-across-the-european-union-2025_6f007516-en/

⁶⁸ UK Department for Business & Trade. (2023). Better Regulation Framework: Guidance. September 2023. Available at: <https://assets.publishing.service.gov.uk/media/67587ba55a2e4d4b993bfa83/better-regulation-framework-guidance-2023.pdf>

⁶⁹ Bruegel, "Better regulation in the EU needs a fresh start" (Bucher & Golberg), 26 January 2026. <https://www.bruegel.org/policy-brief/better-regulation-european-union-needs-fresh-start>

⁷⁰ *ibid*

⁷¹ *ibid*

⁷² European Parliament, Report on European Union regulatory fitness and subsidiarity and proportionality – report on Better Law-Making covering 2020, 2021 and 2022 (2023/2079(INI))

⁷³ CEPS, "The European Commission is neglecting evidence-based law-making" (J. Scott Marcus), 7 January 2026. <https://www.ceps.eu/the-commissions-neglect-of-evidence-based-law-making/>

Better Regulation Guidelines as optional — a practice found by the European Ombudsman to constitute maladministration.⁷⁴ Others have described it as “*systematic procedural evasion*.”⁷⁵

41. RegWatchEurope, whose members (such as the Dutch ATR and German NKR) have repeatedly warned that legislating without economic scrutiny is becoming a structural feature of EU lawmaking. Their research found that, in 2023 alone, the Commission put forward 50 legislative proposals without an IA. Of more than 750 Delegated Acts, just two impact assessments were done. And for Implementing Acts, just one.⁷⁶ Despite these warnings, the loss of policymaking rigour has continued.

42. The Digital Fairness Act (DFA) is a prime example. The RSB issued a negative opinion on the DFA’s underlying ‘Fitness Check on Digital Fairness’, finding “serious shortcomings” and raising fundamental concerns about its procedural integrity. The Board noted that the Check was insufficient; failing, among other things, to:⁷⁷

- accurately and objectively reflect the limited robustness of underlying evidence;
- assess / map coverage of the existing consumer legislation and the digital acquis;
- assess the scale and development of the ‘problems’ identified;
- identify and analyse current enforcement of existing rules at EU and national level;
- consider costs on SMEs and impact on competitiveness; and
- address the simplification potential.

43. While the RSB eventually issued a positive opinion on revised work, it did so with reservations. Notably: A - that the evidence base remained limited, which was not properly disclosed / reflected in the Check; and B - the Commission used an unjustified approach to considering costs on business.

44. Despite the damning assessment from the Commission’s own internal watchdog, the Commission continues (at the time of writing) to push its DFA proposal forward. This is not an isolated incident; it is a symptom of a systemic problem where the political imperative and bureaucratic momentum to legislate is allowed to override the need for sound evidence and rigorous impact assessment. The result is a legislative pipeline that floods the EU with regulations

⁷⁴ European Ombudsman, Recommendation on Better Regulation compliance (Cases 983/2025/MAS et al.), 2025. <https://www.ombudsman.europa.eu/en/recommendation/en/215920>

⁷⁵ Professor Alemanno, Alberto: The Omnibus Road to Constitutional Drift: How the Rise of Omnibus Legislation Undermines Procedural Integrity in the EU, VerfBlog, 2025/11/12, <https://verfassungsblog.de/omnibus-legislation-europe-constitutional/>, DOI: 10.17176/20251112-142022-0

⁷⁶ RegWatchEurope. (2024, October). Key Messages for the New European Commission Mandate, the European Parliament and the Council. <https://www.regwatcheurope.eu/wp-content/uploads/2024/10/2024-RWE-Key-Messages-Next-Commission-Herzine.pdf>

⁷⁷ Regulatory Scrutiny Board, ‘Opinion: Fitness Check on Consumer Law of Digital Fairness’ (SEC(2024) 245 final, 3 October 2024) 4.

that: A - are poorly calibrated to the problems they purport to address; B - impose disproportionate costs on businesses, with knock-on inflationary effect on prices for consumers; and C - create legal uncertainty that deters investment and entrepreneurship.

45. The EU must fundamentally reform its pre-legislative process. No new regulation should proceed without a rigorous, evidence-based justification that demonstrates both the existence of a genuine market failure and the proportionality of the proposed intervention. This should include mandatory public consultation on the evidence base before a legislative proposal is tabled, and an independent review mechanism — modelled on the RSB but with binding authority — to prevent proposals that fail the evidence test from proceeding.

46. To restore credibility and effectiveness, the impact assessment process requires fundamental reform:

- i. **Close the amendment gap:** Impact assessments must accurately reflect laws as *amended*, not their first drafts. The EU should mandate that any substantive amendment by the co-legislators triggers an updated impact assessment. This would transform the impact assessment from a static snapshot into one that reflects the law as it stands. This is not a novel concept. The UK's 'enactment impact assessment' already provides a gold-standard model, requiring a final impact assessment for bills that change significantly during parliamentary passage.⁷⁸ Within the EU, Spain has adopted a similar principle for its scrutiny of EU law, requiring its domestic impact assessment (the 'EIPLE') to be updated as the EU proposal evolves during negotiations.⁷⁹ The EU should adopt this principle, fulfilling the unkept promise of the 2016 Interinstitutional Agreement and answering recent calls from think tanks like Bruegel for a mechanism to assess the impact of amendments.⁸⁰
- ii. **Mandate cumulative burden analysis:** Impact assessments must move beyond assessing the marginal impact of a single proposal. The Commission has itself acknowledged (e.g. in the AI Act's Explanatory Memorandum⁸¹) that digital regulation can impose restrictions on the fundamental freedom to conduct a business under Article 16 of the EU Charter of Fundamental Rights. There is a legal obligation under Article 52(1) of the Charter to assess the proportionality of such restrictions. When multiple regulations each independently limit this freedom, the cumulative burden must be evaluated as a whole — not in isolation, regulation by

⁷⁸ UK Department for Business & Trade. (2023). Better Regulation Framework: Guidance. September 2023. Available at: <https://assets.publishing.service.gov.uk/media/67587ba55a2e4d4b993bfa83/better-regulation-framework-guidance-2023.pdf>

⁷⁹ OECD. (2025). Better Regulation Practices across the European Union 2025. Available at: https://www.oecd.org/en/publications/better-regulation-practices-across-the-european-union-2025_6f007516-en/

⁸⁰ Bruegel, "Better regulation in the EU needs a fresh start" (Bucher & Golberg), 26 January 2026. <https://www.bruegel.org/policy-brief/better-regulation-european-union-needs-fresh-start>

⁸¹ European Commission. (2021, April 21). Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act). COM(2021) 206 final, Section 3.5 (Fundamental Rights). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021PC0206>

regulation. Impact assessments must therefore systematically evaluate the cumulative burden of new rules when added to the existing stock of regulation. This requires a dynamic, economy-wide model that accounts for overlapping reporting obligations, conflicting legal definitions, and the compound effect on innovation outcomes and business investment cycles. Several Member States have established independent bodies dedicated to assess and reduce regulatory burden. The Dutch Advisory Board on Regulatory Burden (ATR), for example, reviews all proposed legislation for its burden at the earliest stage of the legislative process. The ATR leads RegWatchEurope, a network of eight national regulatory oversight bodies, demonstrating that there is both the institutional capacity and the political will to embed burden assessment systematically across Europe.⁸²

- iii. **Introduce a competitiveness benchmark:** Every impact assessment for a major proposal must include a mandatory international competitiveness benchmark. This would compare the proposed EU approach and its associated costs and impact on innovation with the regulatory frameworks in other major jurisdictions. This ensures that the EU's pursuit of its policy objectives does not inadvertently create a permanent competitive disadvantage for its industries.
- iv. **Strengthen independent scrutiny and externalise ex-post evaluation:** The RSB's role should be enhanced, and its negative opinions should carry more weight, potentially triggering a mandatory revision of the proposal. Furthermore, as Bruegel recommends, *ex-post* evaluations should be externalised to a dedicated, independent body—a “Centre of Analytical Expertise”—to ensure impartiality and improve the quality of data collection and analysis.⁸³ This would create a powerful feedback loop, where the real-world impact of legislation directly informs future policymaking.
- v. **Implement ‘One-In, Two-Out’ and sunset clauses:** To control the ever-increasing volume of legislation, the EU should adopt a stringent ‘One-In, Two-Out’ principle, requiring that for every new regulation introduced, two existing ones of equivalent cost are repealed. Furthermore, all new major regulations should include automatic sunset clauses, requiring a full *ex-post* evaluation and an explicit political decision to renew the legislation after a set period (e.g. 5-7 years). This forces a regular assessment of whether a law is still fit for purpose.

47. By transforming impact assessments from a procedural hurdle into a performance-driven analytical tool, the EU can ensure that its legislative ambitions are grounded in economic reality and contribute to, rather than detract from, its long-term competitiveness.

3 | Enforcement reform - a single market requires a single enforcer

⁸² About ATR and RegWatchEurope, Adviescollege toetsing regeldruk, <https://www.adviescollegeregeldruk.nl/regwatcheurope/about-atr-and-regwatcheurope>

⁸³ Bruegel, “Better regulation in the EU needs a fresh start” (Bucher & Golberg), 26 January 2026. <https://www.bruegel.org/policy-brief/better-regulation-european-union-needs-fresh-start>

48. The promise of the Digital Single Market is undermined by a fragmented and inconsistent enforcement landscape. With over 270 digital regulators active across the Member States, businesses face a bewildering array of national interpretations, gold-plating of EU rules, and duplicative enforcement actions. This fragmentation creates legal uncertainty, increases compliance costs, and ultimately harms consumers by delaying the rollout of new services. As the EU tech alliance puts it, “[b]usinesses often face 27 interpretations of the same rulebook and overlapping legal instruments. That’s not a Single Market, it’s a regulatory maze.”⁸⁴

3.1 | The evidence of fragmentation

49. The European Commission’s own assessments of its digital acquis highlight fragmentation. Its first report on the application of the DSA acknowledged that enforcement “*diverges across legislation...enhancing fragmentation*”. Surveying stakeholders, the Commission found “*fragmented legal obligations, inconsistent enforcement, and unclear prioritisation among rules*” as the most commonly cited challenges by stakeholders.⁸⁵ This pattern is repeated across the digital acquis. The Commission’s 2024 report on the GDPR found that national DPAs “continue to adopt diverging interpretations of key data protection concepts”⁸⁶ — a fragmentation that the Draghi report warned “could hinder cross-border entrepreneurship and innovation”.⁸⁷

50. The European Investment Bank’s 2025 Investment Survey found that 86% of EU firms employ staff dedicated to regulatory compliance, with the cost estimated at 1.1% of turnover — and as high as 1.8% for SMEs.⁸⁸ To put these figures in context, the average net income margin for Stoxx Europe 600 companies is approximately 8% of revenue — meaning that compliance staffing costs alone wipe-out approximately 14-23% of firms’ profit.⁸⁹ The EU Tech Alliance reports an even higher figure for European technology companies, with up to 30% of their resources can be taken up by regulatory compliance costs.⁹⁰

⁸⁴ European Tech Alliance. (2026). A CEO Call for Smarter EU Tech Regulation. Retrieved from <https://eutechalliance.eu/ceo-call-to-action/>

⁸⁵ European Commission. (2025, November 17). Report on the application of Article 33 of Regulation (EU) 2022/2065 and the interaction of that Regulation with other legal acts. COM(2025) 708 final. <https://data.consilium.europa.eu/doc/document/ST-15560-2025-INIT/en/pdf>

⁸⁶ European Commission. (2024, July 25). Second report on the application of the General Data Protection Regulation. COM(2024) 357 final. https://commission.europa.eu/document/download/7e75f763-2750-4b0e-a0f7-f698b264d10c_en

⁸⁷ Draghi, M. (2024). The future of European competitiveness – A competitiveness strategy for Europe (Part A) and In-depth analysis and recommendations (Part B). European Commission. Published September 9, 2024

⁸⁸ European Investment Bank. EIB Investment Survey 2025, <https://www.eib.org/en/publications/20250216-econ-eibis-2025-eu>

⁸⁹ Deutsche Bank. (2025, August 11). How will European companies ever catch their US peers? <https://www.dbresearch.com/PROD/RI-PROD/PDFVIEWER.calias?pdfViewerPdfUrl=PROD0000000000598761&rwnode=REPORT>

⁹⁰ European Tech Alliance European Tech Summit 2025. <https://eutechalliance.eu/european-tech-companies-face-an-overwhelming-amount-of-rules-harming-their-ability-to-grow-and-compete/>

51. It should be no surprise, then, that the Eurochambres Economic Survey 2026, covering over 41,000 entrepreneurs, identified regulatory burden as one of the top three challenges for businesses. This is the inevitable result of a system where a single piece of EU legislation can be interpreted and enforced in 27 different ways.⁹¹

3.2 | Three reforms for effective enforcement

52. To deliver on the promise of the Single Market, the EU must move towards a model of centralised, balanced and consistent interpretation and enforcement of regulations. We propose three key principles:

- i. **One interpretation, one enforcer for regulated companies.**
 - i. **Single, authoritative interpretations.** The current fragmented approach — where dozens of national authorities each interpret and enforce digital regulations like the GDPR — creates confusion and inconsistency, and undermines the Single Market. To ensure legal certainty and effective regulation, the EU should move towards a more centralised approach to regulatory interpretation. This requires the EU to designate one central body as responsible for interpretations and issuing uniform guidance that can be enforced EU-wide — rather than relying on multiple national authorities with conflicting views (as is the case with the EDPB, for example). A move towards a more centralised interpretation framework within all digital regulations would enhance clarity, consistency, and accountability in the application and enforcement of digital regulations across the EU. A harmonised, centralised approach will not only protect fundamental rights but also support innovation and business confidence, delivering the legal certainty needed for a thriving digital economy.
 - ii. **One enforcer for regulated companies.** Whether at EU level (e.g. the European Commission) or national level (a ‘one-stop-shop’ national regulator), regulated companies providing cross-border services with EU-wide obligations need a single enforcer. The ‘one-stop-shop’ principle, a cornerstone of the GDPR, has been eroded by procedural fragmentation, misuse of exceptions (such as overuse of what should be the highly exceptional Article 66 GDPR “urgency” provisions), and the reluctance of some national authorities to defer to the lead supervisory authority. The EU must strengthen the GDPR one-stop-shop by clarifying the lead authority’s exclusive competence for cross-border cases and by streamlining the cooperation procedures to prevent forum-shopping and duplicative investigations. The centralisation of enforcement for pan-EU services under regulations like the DMA and DSA are undermined by parallel national regimes which can challenge these harmonised regulations, notably through local litigation, without regard to EU-wide enforcement and the Single Market. Such attempts and centralisation need to be reinforced.

⁹¹ Eurochambres. Eurochambres Economic Survey 2026. Brussels: Association of European Chambers of Commerce and Industry. <https://www.eurochambres.eu/wp-content/uploads/2025/11/EES2026-Report.pdf>

- iii. **Converged digital regulator.** Consideration should also be given to a converged digital regulator that can provide streamlined governance over digital issues and effectively consider the relevant trade-offs involved in regulatory decisions (see below).
- ii. **Accountable and transparent authorities.**
 - i. **Accountability to elected officials.** Regulators suffer from the goldilocks problem – either too much political interference or too little political oversight. To find the effective balance, regardless of the degree of institutional separation, regulatory decisionmakers must be both autonomous and accountable to policymakers. They should report regularly and transparently to policymakers, including on the impact of their decisions on innovation and growth objectives, the state of the digital economy, as well as their decisions, use of resources and future action plans. Regulatory authorities have to be integrated into a regulatory impact assessment framework to support proportionate regulatory interventions based on data modelling and evidence.
 - ii. **Accountability to the courts.** The autonomy of regulators must not mean that they are beyond the law. Decisions and guidelines across digital regulatory regimes should be subject to direct judicial oversight. Companies should have the right to challenge decisions directly before the Court of Justice of the European Union (CJEU), with the option for interim relief in cases of immediate harm, comparable to EU competition law enforcement. This is to provide an efficient and effective means of ensuring accountability and protecting individual rights.
 - iii. **Timely market-critical positions and decisions.** Complex governance frameworks have resulted in coordination mechanisms where authorities struggle to reach timely alignment on market-critical questions, prolonging legal uncertainty. For example, the EDPB process has resulted in lengthy delays in providing legal certainty for training AI models. This hinders innovation and disrupts product strategy, the impact of which has implications for the economy. Regulators should promote early legal certainty, faster time-to-market, and reduced disruptions to product planning.
- iii. **Innovation duty & impact assessments.** Regulatory decisions inherently involve trade-offs. Regulators that are narrowly focused on protecting only one interest are unable to contribute to balanced policy implementation. The simplest way to solve this challenge is to provide all regulators in the digital economy with a duty to promote innovation and require evidence-based impact assessments for each non-compliance decision that consider innovation and growth as well as their other duties.

53. **Case study: GDPR/EDPB - lessons from eight years of GDPR enforcement.** GDPR enforcement has failed to create a Digital Single Market. GDPR application has proven detrimental to innovation and growth as the 40+ Data Protection Authorities (DPAs) in the EU do not perceive that they have a role in facilitating innovation and business economic growth, and

data protection is treated as an absolute right prevailing over any other fundamental right (e.g. freedom of expression and information, freedom to conduct a business). When the GDPR was introduced, proponents framed it as a cornerstone of the Digital Single Market that would strengthen the EU's global competitiveness and save businesses an estimated €2.3 billion annually, but that economic promise has not materialised. This is in part the result of a complex, burdensome framework administered through a fragmented governance structure. The EDPB coordination mechanism, expected to harmonise GDPR interpretation at EU level, is unpredictable, and reaches consensus through often ambiguous positions and produces unclear, sometimes extreme, guidance as it is misused by some DPAs to advance their own agendas or address national specificities. The EDPB's dispute-resolution framework has structural flaws that weaken due process and effective EU-wide supervision: companies often have no meaningful right to be heard at the EDPB stage; outcomes are unpredictable, with years of lead-authority investigation and a reasoned draft decision sometimes rewritten at the last moment; the GDPR's one-stop-shop has been diluted in practice and through the procedural changes introduced in 2025 and "urgency" exceptions construed without accountability to enable unilateral action, which foster fragmentation and forum-shopping. Other concerns include a lack of comprehensive judicial oversight, only partially addressed through court intervention⁹² in 2026, and a lack of regulatory dialogue with companies. The consequence is a failure to create a Digital Single Market serving legitimate EU ambitions in terms of growth and societal progress. European governments have lost control over vital areas of the data economy to a body with structural accountability issues and which operates in a way adverse to the objectives of a data driven economy.

54. Through centralised and consistent interpretation and enforcement, the EU can create a more predictable, uniform, and coherent regulatory environment, reduce compliance costs for businesses, and deliver the full benefits of the Digital Single Market to its citizens.

4 | A moratorium on new digital legislation

55. Given the scale of the challenges outlined above, the most impactful action the Commission can take in the short term is to impose **a moratorium on all new digital legislation**. The constant churn of new regulations — from the DFA to the DNA — creates a climate of perpetual uncertainty that chills investment and diverts resources from innovation to compliance. Before adding new layers of complexity, the EU must first fix the foundations. This means:

- i. **Pausing the Digital Fairness Act and the Digital Networks Act.**
- ii. **Conducting a comprehensive, evidence-based review of the existing digital acquis.**
- iii. **Implementing the structural and enforcement reforms outlined in this submission.**

56. As 20 Member States said in their letter, the EU must have "*...the courage to withdraw superfluous legislation altogether*". Only when the existing framework is coherent, consistently enforced, and demonstrably fit for purpose should the Commission consider new legislative proposals. A moratorium is not a call for inaction; it is a call for intelligent action and better

⁹² Court of Justice of the European Union. (2026, February 10). Judgment in Case C-97/23 P, WhatsApp Ireland Limited v European Data Protection Board. Press release available at: <https://curia.europa.eu/site/upload/docs/application/pdf/2026-02/cp260011en.pdf>

regulation. It is a recognition that the EU's most pressing challenge is not a lack of regulation, but a lack of growth, innovation, and competitiveness. It is time to stop digging.

57. This moratorium is consistent with the growing consensus among Member States on the need for better legislative discipline and hygiene. The governments of Italy and Germany have argued for a strict “principle of discontinuity” to stop “zombie initiatives”.⁹³ This proposal for a regular legislative cleanup, “*repealing laws that appear to be outdated, as well as withdrawing as many pending initiatives as possible*” is sensible, good-governance. Adopting the principle of discontinuity, which is already an established principle of German policymaking, would clear away the debris of past initiatives that otherwise clog the machinery of Brussels. Together, these measures would ensure Brussels remains focused on the efficient delivery of the EU's real priorities.

5 | Substantive views on key legislative files

5.1 | The AI Act

58. The EU has positioned itself as the world's leading technology regulator. This is now increasingly coming at the expense of its innovation and competitiveness. The AI Act, once celebrated as a landmark framework for safe and ethical AI, is becoming an obstacle to Europe's ability to build and scale a serious AI industry. Rather than enabling a thriving AI market in the EU and European champions, it imposes disproportionate compliance costs and layering on requirements that are, in many cases, technologically unrealistic. At a moment when Europe already lags dramatically in AI capacity—holding an estimated 5% of global AI computing power compared to the United States' 74%⁹⁴—the AI Act, as currently designed, threatens to regulate the European AI sector into irrelevance.

59. That is why the AI Act must be subjected to the European Commission's Digital Fitness Check. This exercise exists precisely to stress-test the cumulative impact of the EU's digital rulebook and expose where regulation has become excessive, duplicative, or detached from economic reality. The AI Act must be assessed against Europe's widening AI adoption and investment gap. As Draghi highlighted, European AI startups attract only around 6% of global AI funding, while U.S. firms capture roughly 61%.⁹⁵ In this context, doubling down on regulatory complexity is not governance—it is strategic self-harm.

60. Without a fundamental recalibration—one that matches risk controls with a hard-headed cost-benefit analysis and a clear pro-innovation mandate—the AI Act will continue to choke off

⁹³ Government of Germany & Government of Italy (2026, January 21). Enhancing European Competitiveness: A German-Italian Non-Paper. Available via Euractiv. URL: https://www.euractiv.com/content/uploads/sites/2/2026/01/EURACTIV_COMPNONPAPAER-1.pdf

⁹⁴ EUobserver. (2026, February 13). Why is the EU struggling to scale artificial intelligence? Available at: <https://euobserver.com/202965/why-is-the-eu-struggling-to-scale-artificial-intelligence/>

⁹⁵ Draghi, M. (2024). The future of European competitiveness – A competitiveness strategy for Europe (Part A) and In-depth analysis and recommendations (Part B). European Commission. Published September 9, 2024

homegrown talent, deter investment, and lock Europe into a permanent second tier behind the United States, China, and emergent AI leaders. The Digital Fitness Check offers a critical, potentially last, chance to streamline obligations, cut administrative burden, and send an unmistakable signal that Europe intends to compete in the AI revolution—not simply police it.

61. The AI Act, in its current form, has been widely criticised by businesses and researchers for its complexity, legal uncertainty, and prohibitive compliance costs.^{96 97 98 99} It creates a regulatory paradox by demanding compliance with technical standards that are not yet finalised, fostering a risk-averse environment that stifles the very innovation the EU aims to lead. These are not minor issues that can be resolved with simple tweaks; they are fundamental problems woven into the fabric of the legislation.

62. These shortcomings are rooted in a flawed evidence base. The AI Act's impact assessment was finalised in 2021 — eighteen months before the launch of ChatGPT. Its risk categories, compliance cost estimates, and market assumptions are all pre-GPT.¹⁰⁰ The Commission's cost estimates, which projected up to €330,000 per high-risk product for quality management system setup alone, were calculated before the technology they sought to regulate existed in its current form.¹⁰¹

63. The Commission's AI Omnibus package fails to resolve even the core issues with the Act. It introduces only a limited set of targeted amendments, falling short of meaningful simplification. While the extension of timelines for high-risk rules may offer temporary relief, it does not resolve the underlying compliance challenges. Instead, it merely defers obligations that the EU has struggled to fulfill within its own deadlines. Genuine simplification would require a comprehensive pause on upcoming implementation and enforcement of the AI Act, providing the necessary time for substantive and effective reforms. The current Omnibus package fails to address the Act's core structural deficiencies — ambiguous definitions, burdensome conformity assessments, and its inhibitive impact on innovation. These persistent issues within the AI Act impose unnecessary

⁹⁶ EU AI Champions Initiative. (2025, February). Stop the Clock: An Open Letter to the European Commission. Available at: <https://aichampions.eu/#mission>

⁹⁷ AI Chamber. (2025, April 3). Open Letter Warning Against Overregulation in EU AI Code. Available at: <https://aichamber.eu/ai-chamber-issues-new-open-letter-warning-against-overregulation-in-eu-ai-code/>

⁹⁸ Meyers, Z. (2025). Better Regulation and the EU's Artificial Intelligence Act. *Intereconomics: Review of European Economic Policy*, 60(3), pp. 149–153. Available at: <https://www.intereconomics.eu/contents/year/2025/number/3/article/better-regulation-and-the-eu-s-artificial-intelligence-act.html>

⁹⁹ Open letter: Europe needs regulatory certainty on AI. (2024, September 19). Signed by 50+ companies and researchers including Ericsson, SAP, Spotify, and Klarna. Available at: <https://www.ericsson.com/en/news/2024/9/open-letter-on-fragmented-regulation-risks-to-eu-in-ai-era>

¹⁰⁰ Meyers, Z. (2025, May 15). Better Regulation and the EU's Artificial Intelligence Act. *Intereconomics*, 60(3), 158–164. Available at: <https://www.intereconomics.eu/contents/year/2025/number/3/article/better-regulation-and-the-eu-s-artificial-intelligence-act.html>

¹⁰¹ Laurer, M. and Renda, A. (2021, September). Clarifying the costs for the EU's AI Act. CEPS. Available at: <https://www.ceps.eu/clarifying-the-costs-for-the-eus-ai-act/>

barriers on industry. It is therefore essential that the Digital Fitness Check directly addresses these shortcomings.

64. Therefore, the Digital Fitness Check must step in where the Omnibus has left off. Its mandate is to assess the overall health and coherence of the digital regulatory framework. Excluding the AI Act from this process would be a significant oversight, creating a blind spot in the EU's strategic review. Because the Omnibus package was insufficient, it is now essential that the Fitness Check provides the thorough, structural examination needed to ensure the AI Act can support, rather than undermine, Europe's ambition to be a global AI hub.

65. A meaningful evaluation of the AI Act must go beyond superficial adjustments and address its underlying structural shortcomings. In particular, the fitness check should focus on the following three critical areas of the Act:

i. **Re-establish the AI Act's original risk-based approach:**

- i. The EU AI Act's late-added rules on General Purpose AI Models (GPAIMs) are a major and misguided departure from the Act's original risk-based logic. They shift regulation from high-risk uses to the technology itself, threatening the Act's twin goals of safeguarding citizens and enabling innovation.
- ii. By placing prescriptive obligations on foundation models—the general-purpose building blocks of the AI ecosystem—the GPAIM regime risks chilling development and deployment in Europe. It also creates legal uncertainty through overlap with existing frameworks (notably the GDPR and EU copyright rules) and reliance on technical thresholds (e.g. FLOPS) that will rapidly date. This approach conflates model development with downstream deployment, weakening effective risk management and destabilising the regulatory environment.
- iii. A political course correction is needed: reconsider the GPAIM chapter so the AI Act can refocus on what it was designed to do: regulate high-risk AI applications, while existing EU law continues to govern underlying technologies. This is essential to protect Europe's competitiveness.

ii. **Strengthening proportionality in the EU AI Act high-risk regime**

- i. The EU AI Act's high-risk framework will shape Europe's economy—affecting investment, the cost of innovation, and the EU's ability to stay competitive in the AI race. That is why implementation must be credible, proportionate, and economically sustainable. The Commission's Digital Fitness Check rightly stresses the need to assess the cumulative burden of EU digital rules. Yet the AI Act's rushed adoption has left major gaps—above all, missing harmonised standards and a real risk of inconsistent interpretation and enforcement. To meet the Digital Fitness Check's objectives and respond to the competitiveness deficit flagged in the 2024 Draghi Report, the Commission must deliver a genuinely proportionate high-risk regime.
- ii. A pause via the omnibus package is, of course, welcome—but real simplification requires at the minimum two things:

1. A genuine pause—long enough to ensure the technical and institutional foundations of the high-risk framework are actually in place before enforcement begins.
 2. Greater proportionality in the rules themselves, not just more time to comply with the same overly broad obligations. The high-risk requirements are drafted at a level of abstraction that invites expansive interpretation and defensive overcompliance. The Commission should explicitly ensure that all obligations under the high-risk regime are subject to a robust proportionality test, so that compliance measures are necessary and appropriate to the actual risks posed by the specific system and use case. Without that, the EU risks building a high-cost compliance model that disadvantages European innovators and slows adoption across the internal market.
- iii. This proportionality approach should also apply to practical pain points that currently generate disproportionate burden:
1. **Territorial scope:** The concept of systems “whose outputs are used in the EU” remains too vague for global supply chains. Companies need clear criteria and workable tools—such as enforceable contractual restrictions, technical access controls, and terms-of-use limitations—to make compliance feasible.
 2. **High-risk classification:** Overbroad categories—particularly in biometrics and employment—risk capturing low-risk applications and diluting enforcement focus. The perimeter should be narrowed to target only systems that present material, demonstrable risks to fundamental rights, health, or safety, rather than sweeping in routine tools such as translation, scheduling, or administrative assistants.
- iii. **Rethink the complex and fragmented governance structure under the AI Act:**
- i. The AI Act establishes a multi-layered governance system intended to ensure comprehensive oversight, but it is likely to produce a complex and fragmented enforcement landscape. At EU level, it brings together several bodies—the Commission’s AI Office, the European Artificial Intelligence Board, a Scientific Panel, and an Advisory Forum—whose mandates are overlapping and, in places, insufficiently delineated. The AI Board, for example, is formally advisory yet is assigned tasks that intersect with the AI Office’s operational role and the Scientific Panel’s technical remit. This institutional complexity risks diluting accountability, slowing decision-making, and making the framework difficult for stakeholders to navigate.
 - ii. Fragmentation is even more pronounced at Member State level, where multiple national actors may be designated, including competent authorities, notifying authorities, single points of contact, and fundamental rights authorities. The requirement to appoint one or more competent authorities is already driving divergence in national setups. Moreover, by early 2026, 19 of 27 Member States had missed the designation deadline — an indicator of uneven preparedness and a likely source of inconsistent enforcement. This

emerging patchwork risks undermining the AI Act’s harmonisation objective. To avoid replicating or worsening the GDPR’s enforcement challenges, the governance model should place greater emphasis on clearer central coordination from the European Commission, well-defined institutional roles, and more consistent implementation across Member States.

5.2 | GDPR

66. The Digital Fitness Check is a key opportunity to strengthen EU competitiveness and unlock innovation, but it can only deliver if it includes a substantive review of the GDPR. A narrow exercise limited to identifying overlaps or making minor procedural tweaks will not address the main problems. While intended to facilitate simplification and secure AI development within the EU, the Digital Omnibus shows the limits of piecemeal changes: they do not resolve the legal uncertainty and fragmentation created by divergent and excessive interpretations and enforcement across Member States. To address the fundamental issues, a comprehensive evaluation of the entire data protection regime within the Fitness Check is not only beneficial, but imperative for the health of the EU’s digital economy.

67. The GDPR has created significant structural challenges that go far beyond administrative burdens. Inconsistent interpretations from national data protection authorities and courts applying the GDPR has led to legal uncertainty. A 2025 Bitkom survey found that 82% of German firms reported uncertainty about the exact requirements of the GDPR — even seven years after its implementation.¹⁰² This has fostered a risk-averse environment where the fear of disproportionate fines and opportunistic litigation often outweighs the pursuit of innovation. Compounded by the outdated and overlapping ePrivacy Directive, the framework frequently fails to provide the balanced, predictable, and proportionate approach necessary for a thriving Digital Single Market.

68. These concerns are now supported by a substantial body of academic evidence. A comprehensive 2026 literature review of empirical research on the GDPR's impact on innovation, published in *Computer Law & Security Review*, concluded that the evidence is “*overwhelmingly*” negative.¹⁰³ The review found that “*representative surveys find large, even overwhelming numbers of firms reporting innovations being abandoned or foregone, with AI especially obstructed. Econometric studies are consistent with this, finding reductions in radical innovations, AI development, and VC investment.*”

69. Targeted adjustments—such as modest extensions to incident notification deadlines—are insufficient because they do not address the underlying issue: persistent tension between the GDPR’s practical application and the EU’s wider strategic objectives for data use and AI. Moreover, the GDPR’s interaction with newer instruments, including the Data Act, the Digital Services Act, the Digital Markets Act, and the Digital Governance Act, has introduced additional legal friction, particularly around core concepts such as consent, anonymisation, and the

¹⁰² Bitkom. (2026, February). *Datenschutz in der deutschen Wirtschaft — Studie 2025*. Based on a representative survey of 603 companies. <https://www.bitkom.org/sites/main/files/2026-02/bitkom-studienbericht-datenschutz.pdf>

¹⁰³ Martin, N. & von Grafenstein, M. (2026). Innovation and the GDPR: Much ado about quite a lot. *Computer Law & Security Review*, 60, 106270.

acknowledgement of economic and scientific value of personal data. These challenges cannot be resolved through isolated amendments; they require a systemic review of how the framework operates in practice.

70. The Fitness Check should therefore examine how the GDPR operates in practice and identify structural changes needed to make the EU data protection framework coherent, predictable, and innovation-enabling. In particular, it should focus on the following areas of the GDPR:

- i. **Explicitly position the promotion of innovation as a core GDPR objective and a primary mandate for Data Protection Authorities:**
 - i. To ensure a balanced and proportionate application of the law, the GDPR needs to introduce explicit requirements on all the Data Protection Authorities to balance fundamental rights protection with the promotion of innovation, competitiveness and economic impact. This mandate must be accompanied by transparency and accountability: regulators should be required to report annually on how their activities have enabled innovation and contributed to the EU's digital competitiveness, using clear key performance indicators rather than aspirational language. Without such a regulatory innovation mandate, the EU will continue to undercut its potential AI leadership and ability to attract talent, capital and cutting-edge development that will continue to go elsewhere.
- ii. **Secure the risk-based data protection framework:**
 - i. Reform is needed to ensure the GDPR functions in a genuinely risk-based, proportionate, and balanced manner. In practice, organisations are frequently expected to apply similar compliance processes and documentation to low-risk, routine processing as they do to activities that present material risks to individuals.
 - ii. GDPR does not provide a sufficiently clear and operational risk-based framework for its interpreters to be required to differentiate genuinely high-risk processing from low-risk activities that are routine and essential for product improvement, security, research, and development. As a result, organisations frequently default to the most conservative interpretation, applying heavy governance, documentation, and legal review to marginal-risk use cases simply to avoid enforcement exposure. This misallocation of effort drives up compliance costs, slows iteration cycles, and diverts investment away from meaningful privacy protections and genuine innovation. This has encouraged a compliance culture focused on formalities—template policies, exhaustive records, and procedural “box-ticking”—rather than on implementing proportionate safeguards that meaningfully reduce the likelihood and severity of harm and enable to realise the benefits of the underlying data use.
 - iii. What is missing is a proportionate, operational framework grounded in demonstrated risk. Clearer confirmation that the GDPR is a risk-based regulatory regime—and that it should be interpreted and applied accordingly

in a proportionate manner—would improve legal certainty for organisations, enable regulators and courts to target guidance and enforcement on genuinely high-risk processing, and ensure a balance between fundamental rights, support responsible data use and innovation without weakening protections where the stakes are highest.

iii. **Streamline the GDPR’s fragmented governance regime:**

- i. Businesses operating across the EU face a regulatory patchwork, as national data protection authorities often adopt divergent and conflicting interpretations of core GDPR concepts or achieve “consensus” through unworkable and ambiguous positions. In practice, this turns compliance into a regulatory lottery, where outcomes depend less on the text of the GDPR than on the Member State of establishment or the authority leading an investigation. The result is reduced legal certainty, higher compliance and advisory costs, duplicated internal processes, and more conservative product and data-governance decisions. Addressing enforcement coherence, coordination, and predictability by centralising interpretative powers with the European Commission is therefore a natural and necessary focus for the Fitness Check.

iv. **Fix the GDPR’s overbroad and inconsistently applied definitions of personal data:**

- i. The GDPR's definition of personal data was always intended to be contextual and relative, as clearly set out in its Recital 26— whether information is “personal” depends on who holds it, what means of identification are reasonably available to that entity, and whether re-identification is realistic given legal, technical, and financial constraints and incentives. The CJEU has consistently affirmed this approach, yet many national data protection authorities have applied a near-absolute standard of identifiability, treating data as personal even where the processing entity has no realistic means of (re)identifying an individual. This disconnect has generated persistent legal uncertainty and inflated compliance costs across the EU.
- ii. The consequences for innovation are tangible. Organisations routinely default to the most conservative compliance posture, applying heavy governance to processing activities that present no meaningful risk to individuals. Resources are diverted from genuine privacy protections toward formalistic compliance. The lack of operational criteria for using pseudonymised data with a reduced risk profile — despite pseudonymisation being a cornerstone of privacy-preserving innovation — further discourages responsible data sharing. In healthcare, life sciences, and AI development, where large and diverse datasets are essential, this ambiguity acts as a direct barrier to research and weakens the EU's strategic autonomy.
- iii. Clarifying the definition in line with the GDPR original intent and the CJEU's established risk-based approach would not weaken data protection. It would correct the excesses resulting from an ineffective governance structure, and enable compliance efforts and enforcement to be focused on where actual risks to individuals exist. This is regulatory maturity and it is essential for

restoring the GDPR as a targeted, effective instrument within a coherent digital governance framework.

v. **Restore the exceptional nature of joint controllership by clarifying Article 26:**

- i. Joint controllership under GDPR Article 26 was originally conceived as an exceptional regime, intended only for situations involving genuine co-determination of purposes and means. However, CJEU rulings—such as *Wirtschaftsakademie*, *Fashion ID*, and *Russmedia*— have been broadly misunderstood. Along with expansive interpretations by national DPAs (notably the German BfDI), Article 26 has evolved into a de facto and sui generis liability framework, contrary to basic rules of liability by creating a regime where responsibility is divorced from actual control.
- ii. The expansive interpretation of joint controllership has led to a situation where entities with little influence over data processing are being held liable and represents a significant departure from the basic legal tenet that liability should be commensurate with fault and control. CJEU Advocate General Bobek, in his seminal opinion in the *Fashion ID* (CJEU) case, warned against a legal fiction where “everyone will be a [joint] controller of personal data!” He argued for an approach where liability is tied to the specific processing operations over which an entity exercises genuine control. Bobek highlighted the absurdity of holding a party liable who has no access to the data and thus cannot fulfill data subject rights, a situation he described as a “judicially sponsored command to disconnect” from the modern internet. By detaching liability from the capacity to influence the processing, Article 26’s joint controllership framework not only creates an unworkable compliance burden but also fundamentally challenges the core principles of accountability and justice that underpin traditional liability rules.
- iii. Article 26 and its interpretation have forced entities, including SMEs and public institutions, to enter into complex arrangements for minimal interactions, leading to unclear responsibilities, duplicated transparency notices, and disproportionate liability. To resolve regulatory overlap and unnecessary complexity, Article 26 must return to its original purpose. Article 26 should explicitly clarify that controllers are to be regarded as joint controllers only where they actively participate in, and actually influence, decisions on the purposes and means of processing.

vi. **Strengthen and clarify the scope of automated decision-making by defining its key terms:**

- i. Article 22 GDPR was deliberately built as a high-threshold safeguard for high-stakes automation. It was meant to capture genuinely consequential, fully automated determinations—such as automatic refusal of credit, denial of essential social benefits, rejection in an asylum or border context, exclusion from education, or automatic contract termination—decisions that alter a person’s legal position or have an equivalent level of seriousness. “Similarly significantly affects” was calibrated as a demanding test: the decision must materially shape an individual’s circumstances, behaviour or choices, or—at its extreme—drive exclusion or discrimination. This design

choice matters politically: it protects people where automation can cause real harm, while avoiding a blanket regime for the ordinary algorithmic optimisation that underpins modern services and commerce.

- ii. That legislative balance has been eroded over time. Article 22 leaves “legal effects” and “similarly significantly affects” undefined, and some supervisory authorities have used this ambiguity to treat Article 22 as a near-general prohibition—stretching it to cover routine algorithmic processing and recasting almost any model-driven output as an Article 22 “decision.” This approach effectively collapses the intended threshold and turns a targeted fundamental-rights protection into a blunt instrument. It also sits uneasily with the CJEU’s confirmation in SCHUFA that Article 22 is concerned with decisions producing effects of real legal or equivalent significance, not every automated assessment or scoring activity as such.
- iii. The Digital Fitness Check should restore legal certainty and the original political compromise. It should define “legal effects” and “similarly significantly affects” operatively, limiting Article 22 to decisions that produce a prolonged or permanent impact comparable to a legal effect—i.e., outcomes that meaningfully determine access to essential services, opportunities, or rights. This would re-anchor enforcement in serious harm and fundamental rights, prevent regulatory overreach into low-risk automation, and allow innovation and everyday digital services to operate under the GDPR’s general rules rather than an expanded Article 22 that ends up operating as a prohibition, contrary to its original intention.
- vii. **Aligning compensation with actual harm:**
 - i. The compensation framework of the GDPR is increasingly being used in ways not intended by the legislator. The low threshold for claims makes speculative mass litigation commercially viable. At the core of this development is the expansion of “non-material damage” under Article 82 to include mere “loss of control” over personal data without proof of actual harm. This deserves serious policy attention. Courts across Member States are seeing growing numbers of low-value, often formulaic copy-paste claims that drain judicial resources without meaningful benefit to data subjects. In practice, the incentives created by this development benefit claimant law firms more than data subjects, pushing Article 82 toward a volume-driven litigation model. Businesses, including SMEs and public bodies, are forced to divert disproportionate resources to legal defence against speculative and duplicative litigation instead of compliance or innovation, undermining confidence in the framework. In addition, duplicative claims promote forum shopping and interpretative fragmentation, eroding legal certainty and harming the internal market.
 - ii. The Fitness Check should therefore reaffirm that compensation under Article 82 is conditional on proof of actual, demonstrated harm. This would enhance legal certainty without diluting protection for individuals who have suffered genuine damage. In addition, harmonised admissibility standards for representative actions (prevent unjustified duplication) and increased

transparency regarding litigation funding is required to ensure that enforcement remains proportionate, credible, and aligned with the GDPR's objectives—and better serve the interests of data subjects.

2. Excluding a substantive review of the GDPR from the Digital Fitness Check would be a strategic mistake and would leave the exercise incomplete. The GDPR is not simply another element of the EU's digital acquis; it is a foundational framework for the digital economy. Its structural shortcomings cannot be adequately addressed through narrow, piecemeal amendments. The Digital Omnibus has already shown the limits of a light-touch simplification approach—and, in any event, its purpose differs from that of the Fitness Check: the former targets targeted amendments to deliver quick reductions in burden, while the latter is intended to take a deeper look at the core of the EU digital regulatory landscape and reassess its effectiveness. Making the GDPR a central pillar of the Digital Fitness Check is therefore essential to enabling a more agile, innovation-friendly regulatory environment that continues to uphold European values and supports long-term economic competitiveness.

5.3 | ePrivacy Directive

71. The European Commission's Digital Fitness Check needs to tackle the long-overdue reform of the archaic 2002 ePrivacy Directive. Originally adopted in 2002 and last substantively revised in 2009, the ePrivacy Directive (ePD) is a relic of an earlier internet era. As the Commission launches its Digital Fitness Check to assess the EU digital rulebook, the ePD stands out as a prime candidate for fundamental reform. Its age has degraded the user experience and entrenched a convoluted, overlapping regulatory architecture that hampers innovation and makes compliance unnecessarily burdensome.

72. The ePD's core flaw is the dual-track privacy regime it creates alongside the GDPR. Where cookies and other tracking technologies involve personal data, organisations must navigate both frameworks at once—driving fragmented enforcement, persistent legal uncertainty, and disproportionate compliance costs, with no commensurate gain in protection.

The Commission has effectively conceded the current approach isn't working. In February 2025, it withdrew the long-stalled ePrivacy Regulation proposal after years of legislative deadlock. That moment should mark a turning point. The Digital Fitness Check shouldn't revive another standalone ePrivacy framework; it should eliminate duplication by consolidating overlapping rules into a single, coherent regime. Specifically, the Fitness Check should address the following areas in the ePrivacy Directive to tackle its harmful impact on EU innovation and competitiveness.

- i. **Repeal and consolidate the ePrivacy Directive under the GDPR:**
 - i. As a Directive, the ePD has been inconsistently implemented and enforced across the 27 Member States, creating significant legal uncertainty and compliance challenges. Only a full repeal and consolidation under the GDPR can ensure a truly harmonised approach.
- ii. **Consolidate cookie and traffic data rules under the GDPR:**

- i. Cookie fatigue can only truly be addressed by removing Article 5(3) of the ePrivacy Directive entirely, consolidating the rules into a single, technologically neutral regime under the GDPR. This would: allow the gathering of data from terminal equipment, and its use, to rely on a range of legal bases appropriate to the actual risk; enable low-risk activities like analytics and fraud detection without unnecessary consent banners; and unlock the data potential of the IoT ecosystem, as envisioned by the Data Act. Cookie placement cannot be assessed in isolation, because it is inseparable from the purpose for which the resulting data will be processed, meaning that both the installation and the subsequent use of the collected data should rest on the same GDPR legal basis that would vary depending on the actual purpose of use.
- ii. The same logic applies to the Directive's rigid consent rules for traffic data, which are inconsistent with the GDPR's flexible, risk-based framework and directly obstruct the Data Act's goal of a vibrant data economy. Modernising these rules is essential for the development of connected services European consumers and industries increasingly rely on.
- iii. **Remove outdated unsolicited marketing provisions:**
 - i. The provisions on unsolicited communications are a relic of the 1990s, focusing on outdated technologies like fax machines and cold calls. The GDPR already provides a modern, technologically neutral framework for regulating the processing of personal data for marketing purposes. Removing these redundant and confusing articles from the ePrivacy Directive is a simple, common-sense step toward harmonisation.

73. The Digital Fitness Check offers a clear choice: continue with failed, incremental tinkering that creates more problems than it solves, or finally and decisively modernise the EU's rules on electronic communications. A true commitment to competitiveness and innovation demands the latter. We strongly urge the Commission to use this opportunity to recommend the full repeal of the ePrivacy Directive and the integration of its principles into the modern, flexible, and risk-based framework of the GDPR.

5.4 | Digital Markets Act (DMA)

74. While the DMA was intended to promote fairness and contestability, a growing body of evidence suggests its rigid, ex-ante framework is imposing significant costs on European businesses and consumers. A comprehensive 2025 study by leading academics found that DMA-related efficiency losses could reduce business revenues by up to €114 billion, with the retail and accommodation sectors particularly hard-hit.¹⁰⁴ These costs are driven by diminished reach, weakened personalisation, and increased transaction costs for businesses that rely on digital

¹⁰⁴ Cennamo, C., Kretschmer, T., Constantiou, I., & Garcés, E. (2025). Economic Impact of the Digital Markets Act on European Businesses and the European Economy. Digital Markets Competition Forum. Available at: <https://www.dmcforum.net/publications/economic-impact-of-the-digital-markets-act-on-european-businesses-and-the-european-economy/>

platforms.¹⁰⁵ For consumers, the impact has been equally stark: a separate large-scale survey found that two-thirds of Europeans now have to search longer for relevant online content, with a majority reporting a worse online experience than before the DMA came into effect.¹⁰⁶ The regulation has made European users' digital lives "*more cumbersome and less intuitive,*" with 80% of consumers remaining unaware of the DMA itself.¹⁰⁷

75. The DMA text gives the European Commission discretion over whether the Regulation should be revisited through legislative change. Under Article 53 DMA, it is for the Commission to decide whether a substantive reform of the framework is necessary. In our view, this concentrates too much control in the hands of the Commission which is already tasked with enforcing the law. A meaningful review of the DMA—grounded in evidence and aligned with evolving political priorities—should instead be undertaken as part of the Digital Fitness Check.

76. The DMA is a novel and complex piece of legislation that introduces a new regulatory paradigm for digital markets. While we recognise the DMA's stated objective of ensuring contestability and fairness, we urge a flexible and evidence-based approach to its implementation faithful to its objective to avoid unintended consequences for innovation and user experience.

- i. **Adopt impact assessments for non-compliance decisions and material changes to market dynamics.** Meta's experience with the enforcement of Article 5(2) of the DMA reveals a disconnection from market and economic realities. This is evidenced by the Commission's non-compliance investigation, which overlooked the significant benefits of personalised advertising for European businesses and consumers. We therefore propose the Commission adopt an impact assessment (including impact on consumers and innovation) for each non-compliance decision under DMA enforcement. The DMA's disconnect from economic realities also can linger after non-compliance decisions, ignoring material changes to market conditions such as significant entry or technological change. The DMA should also consider a mechanism for impact assessment triggered by material changes to market dynamics to ensure DMA designations and obligations remain relevant to the market.
- ii. **Ensure due process in enforcement:** Meta's efforts to comply with the DMA were hindered by shifting, delayed, and inconsistent feedback from the regulator, leading to significant legal uncertainty. We invite the Commission to improve future enforcement predictability through a formal commitment process with clear timelines, objectives, and Standard Operating Procedures, aligning with international procedural standards.
- iii. **Preserve the availability of high-quality products for EU users:** Innovative companies are deterred from launching new products and features due to a lack of

¹⁰⁵ *ibid*

¹⁰⁶ Nextrade Group. (2025, September). Impact of the DMA on EU consumers. <https://www.nextradegrouppllc.com/impact-of-the-dma-on-eu-consumers>

¹⁰⁷ Bauer, M. & Pandya, D. (2025, October). What About Us? Consumer Response to the Digital Markets Act. European Centre for International Political Economy (ECIPE). Available at: <https://ecipe.org/publications/consumer-response-to-the-digital-markets-act/>

legal certainty. This denies European consumers and businesses access timely to the newest, highest-quality products and innovations. To rectify this, the Commission should consider adopting a DMA innovation safe harbour for new products and features by shifting any regulatory assessment to post-launch evaluation of actual effects, helping to ensure that European users are no longer left behind.

- iv. **Review the designation criteria:** The quantitative thresholds for gatekeeper designation have been handcrafted to capture only selected market participants, leading to unfair asymmetrical advantages. We invite the Commission to review the DMA's designation criteria to ensure they apply more consistently across all market participants. To better meet its goals, the DMA designation criteria should also address factors such as the contestability of markets, the state of barriers to entry, and the presence of strong and dynamic competition from other firms.
- v. **Resolve conflicts of law between DMA and GDPR:** The current regulatory landscape imposes a significant and often paradoxical challenge for companies, who are forced to navigate complex and overlapping frameworks. As Meta noted in its response to the EDPB/EC consultation on the matter, this evolving environment imposes a form of “double jeopardy” on companies, who must comply with *“increasingly demanding obligations: enabling open access and interoperability on one hand, while simultaneously meeting more stringent and granular consent requirements for personal data processing on the other.”*¹⁰⁸ This conflict of laws cannot be resolved by issuing non-binding guidelines that exceed the legal mandates of both the DMA and GDPR. The Commission must provide legal certainty by clarifying and de-duplicating the two regimes, respecting their distinct legal bases and policy goals.

5.5 | Digital Networks Act (DNA)

77. While DNA has been proposed only recently, it is already clear that it did not deliver the anticipated regulatory simplification for the digital infrastructure sector and its provisions overlap with a number of existing digital files, proposed legislation and ongoing Digital Omnibus process. DNA's inclusion into the Digital Fitness Check will help ensure a holistic approach to the regulatory framework for the entire digital value chain. Ensuring such coherence while the legislative process is ongoing, rather than after it concludes, is the most effective way to increase regulatory certainty for member states and companies, and decrease compliance costs and burdens.

78. The Digital Networks Act (DNA) proposes changes to the EU's telecommunications framework. While the proposal aims for simplification, it instead introduces new complexities and extends the scope of regulation in ways that could have unintended consequences for the digital ecosystem.

¹⁰⁸ Meta response to the public consultation on joint guidelines on the interplay between DMA and GDPR, 2025.

- i. **Scope creep and private networks (Article 9):** The DNA appears to extend the ‘general authorisation’ regime to bring private production networks — like those operated by Meta, Netflix, and others to efficiently deliver content globally — under the scope of traditional telecoms regulation. Furthermore, the legal provisions and recitals seem to be at odds. The impact assessment does not evidence the need for such extension, and the fact that numerous existing laws — from consumer obligation to cybersecurity rules and data-related obligations already apply. This could subject such infrastructure to a range of inappropriate obligations, including law enforcement access requirements, security mandates, that were designed for publicly available networks providing connectivity to users, not supporting a company’s own operations.
- ii. **Conciliation procedure (Article 192):** The DNA introduces a “facility for voluntary conciliation procedure” on commercial and technical arrangements, despite consistent findings the peering market is functioning well in the absence of regulation and no systemic problems exist. This creates a pathway for regulatory intervention in commercial disagreements between telecom and content providers, that could be misused to extract value from content providers as a way to resolve a dispute, effectively creating a backdoor for the ‘network fee’ payments that have been repeatedly rejected by member states as a policy option.
- iii. **New resilience and security obligations (Articles 5-7):** The DNA creates a new EU-level resilience framework targeting digital infrastructure providers, including CDNs and subsea cables. While we support the goal of enhancing resilience, many critical details on the scope and application of these rules are left to be clarified in guidelines, which will only arrive months after the law comes into force. Moreover, these rules are potentially overlapping with existing rules, such as in the NIS2 Directive, which is still to be fully implemented.
- iv. **New messaging services obligations (Article 103 and 106):** DNA introduces new mandates for messaging services, for example, to connect to emergency services or prevent fraudulent activities. These must be developed with close attention to technical feasibility and proportionality and in order to avoid undermining end-to-end encryption and user security.
- v. **Reopening net neutrality (Article 93):** By incorporating the main provisions of the Open Internet Regulation into the DNA, the proposal effectively opens the door for dismantling and changing its key principles during the legislative practices. Instead of simplifying, DNA thus reduces legal clarity on the applicability of these provisions.
- vi. **Overreliance on secondary legislation and soft law:** Many critical details on the scope and application of the DNA are not included in its text and instead left to be clarified in secondary rules or guidelines. This increases the uncertainty for business, makes it impossible to properly assess and prepare for compliance, and leaves a lot of critical decision making outside of the democratic legislative processes.

5.6 | Digital Fairness Act

79. The planned Digital Fairness Act (DFA) is a prime example of legislation running counter to the explicit instructions from Member States demanding regulatory restraint.¹⁰⁹ As detailed in Section 2.1, the initiative is proceeding despite a negative assessment from the Commission's own Regulatory Scrutiny Board (RSB). The RSB found the evidence base was not robust, and failed to account for landmark recent legislation such as DSA. Concern about the DFA is shared by a growing chorus of European voices — notably with wide opposition to the DFA from European industry. In their public consultation responses, EU tech champions including Wolt, Ryanair, Vinted, and Spotify all cautioned against the DFA, urging the Commission to prioritise enforcement of existing laws over the creation of new ones.¹¹⁰ A sentiment echoed last month by Ireland's Digital Services Coordinator, John Evans.¹¹¹ The 33 CEOs of the EU Tech Alliance have been even more direct, encouraging the Commission to stop “reinventing the rulebook and start using it”.¹¹²

80. The DFA's proposed interventions are misguided. Restrictions on personalisation would disproportionately harm European SMEs, who rely on it to reach new customers and compete with larger players. 80% of EU SMEs say personalisation helps them attract more customers, 86% report increased revenue, and 75% say they would struggle without it.¹¹³ Without personalisation, advertisers spend 2–3.3x more for the same results.¹¹⁴ The Europe on Pause campaign, which represents over 300 European businesses, has warned that the DFA threatens to cut off one of their most vital growth tools.¹¹⁵ The Fitness Check must ensure that any new rules are subject to a robust assessment of their impact on economic growth.

81. Enhancing youth safety online is an important EU priority. Meta has supported calls from Member States for a Digital Majority Age requiring parental approval for apps teens use. Together with effective age verification, this would help to provide empowered, safe and age-appropriate experiences for youth online. The place for these urgent measures is a targeted legislative instrument that introduces industry-wide rules and solutions quickly. It is not the DFA where using an expansive legislative vehicle will delay essential safeguards for children.

¹⁰⁹ Letter from 20 Member States [Ireland signed later] to the European Commission on Better Regulation. (2025, October 15). https://www.politico.eu/wp-content/uploads/2025/10/22/Oca0f5da-ea43-4b1b-82a5-fda29587e0e5-211025_Letter-PEC-Simplification_final.pdf

¹¹⁰ Markeviciute, E. (2025, October 31). “*What do Europeans have to say about the Digital Fairness Act?*” Euronews. <https://www.euronews.com/next/2025/10/31/what-do-europeans-have-to-say-about-the-digital-fairness-act>

¹¹¹ John Evans, “Keynote Conversation on Digital Regulation and the European Way,” CERRE Digital Platforms Summit 2026, Brussels, 25 February 2026, at 21:31 (“*What I would like to see next year is a doubling down on applying the current rule book and not be completely obsessed with changing it all the time*”), available at <https://www.youtube.com/watch?v=1RN5ZM8F47E&t=1283s>

¹¹² European Tech Alliance. (2025, September). A CEO Call for Smarter EU Tech Regulation. Retrieved from <https://eutechalliance.eu/ceo-call-to-action/>

¹¹³ Nexttrade Group. (2025). EU Consumer Survey on Personalisation. <https://www.nexttradegroupplc.com/digital-fairness-act-survey>

¹¹⁴ Benjamin Mueller and Daniel Castro, “The Value of Personalized Advertising in Europe” (Center for Data Innovation, November 22, 2021), available at <https://www2.datainnovation.org/2021-value-personalized-ads-europe.pdf>.

¹¹⁵ Europe on Pause. (2026). Retrieved from <https://www.europeonpause.com/>

82. Consistent with the moratorium called for in Section 4, the Digital Fitness Check must recommend that the DFA be halted. The EU’s consumer protection framework, which includes the DSA, GDPR, UCPD is already the most comprehensive in the world. Analysis by Freshfields found that all the key themes considered for DFA are already covered by at least one law. ‘Deceptive design’ is the most regulated of them all, covered by no less than 12 separate legal acts.¹¹⁶ The challenge is not a gap in the rulebook, but a gap in enforcement. Before adding another complex and duplicative legislative layer, the Commission must first ensure the consistent and effective application of the laws it already has.

5.7 | Digital Services Act (DSA)

83. The Digital Services Act (DSA) represents a significant regulatory shift for the EU, maintaining foundational elements of the eCommerce Directive while also introducing novel and ambitious requirements covering transparency, content moderation, risk assessments, advertising, and user rights. Several concepts in the law were untested before it went into force, and compliance has proven complex for both regulators and platforms, with ongoing challenges around interpretation, and harmonisation across Member States. As the law is implemented, lessons are emerging about the impact and effectiveness of certain provisions. The Digital Fitness Check provides an opportunity to improve processes and the consistency of application across Member States, help clarify ambiguities and address any unintended consequences of the DSA, including an assessment of DSA incentives and enforcement and any impact on freedom of expression. Digital platforms may be incentivised to over-enforce under the DSA’s mandate in the face of steep penalties, which can amount to up to 6% of a company’s global annual group revenue plus additional potential penalty payments.

Article 21: Out-of-Court Dispute Settlement (ODS) Bodies

84. Out of Court Dispute Settlement Bodies aim to provide users with accessible, impartial and non-judicial ways to address content moderation disputes. Although the DSA seeks to create a robust and harmonised framework for ODS bodies, our experience to date is that the current ODS body landscape is highly fragmented, inefficient, and not as effective as it could be. We believe that the EC can play an important role in providing regulatory clarity, operational harmonisation and consistency by partnering with industry to develop robust standards designed to enhance the quality and efficiency of ODS body decision-making. This could be achieved by:

- i. **Establishing clearer standards around certification.** Across the nine certified ODS bodies, there is a significant variation in expertise, which leads to inconsistent decisions that may undermine trust in ODS bodies and reduce the value of aggregated data from ODS body decisions. The European Commission should set standards that make clear the competency requirements (e.g. knowledge of

¹¹⁶ Freshfields EU Digital Fairness Dashboard (live), <https://www.freshfields.com/en/our-thinking/campaigns/tech-data-and-ai-the-digital-frontier/eu-digital-strategy/navigating-the-eus-digital-fairness-act>

national laws) that ODS bodies must meet in order to be certified by Digital Service Coordinators (DSC).

- ii. **Cementing consistent processes.** Differences in internal ODS bodies' processes create an operational complexity that delays swift resolution for users. For example, a significant proportion of the reports that Meta has received from ODS bodies lack the information needed for us to locate the relevant content moderation decision record, requiring follow-up with the ODS body. To resolve the divergence in processes, the EC should bring forward guidance which seeks to harmonise processes across the different ODS bodies, including a standardised appeal notification format.
- iii. **Safeguarding against bad faith or resolved cases.** We have experience of ODS bodies seeking redress for users where we have already overturned our original content moderation decision through an internal complaint-handling mechanism. In such a scenario, the basis for the appeal is no longer present. To mitigate this risk, ODS bodies should consistently apply admissibility checks to filter out cases that have already been remedied. ODS bodies should also redirect users to exhaust a platform's internal appeals processes before seeking redress via an ODS body, which speaks to the importance of harmonisation of standard operating practices discussed in (i). Equally, ODS bodies should not admit complaints that are vexatious or in bad faith;
- iv. **Fee transparency and consistency:** A lack of transparency on fee structures makes it difficult for platforms to judge what represents a "reasonable" fee and some fee structures may incentivise ODS bodies to incur excessive costs or reach a certain appeal decision. ODS bodies should operate on clear and auditable fee structures as well as publish cost data that is sufficiently detailed to allow for platforms' scrutiny of the costs associated with each individual case or decision; and
- v. **Securing information exchange.** A major gap in ODS implementation under the DSA is clarity on requirements for ODS bodies related to data protection and data security, particularly interaction with GDPR. The EDPB's draft Guidance on the DSA could have been an opportunity to clarify such gaps, yet was insufficient in addressing privacy risks presented by ODS bodies (see above). In addition, there are variations in the approaches taken by different ODS bodies linked to their status as private or public sector entities, with some public bodies, for example, not willing to sign data sharing agreements. Platforms must ensure that the transfer of personal data to ODS bodies is lawful and therefore, DSCs should require ODS bodies to comply with the data protection and data security standards set out in platforms' terms and conditions and / or required under the GDPR.

Article 22: Trusted Flaggers

85. Meta works with a broad range of Trusted Partners globally and —through this long-standing work— has developed a rigorous process for identifying, vetting, and educating civil society partners as well as reviewing escalations in an efficient manner. Although we recognise the important role of the "Trusted Flagger" regime within the DSA, we have detected a noticeable variation in the quality notices from Trusted Flaggers since the Act was implemented. This

inconsistency inhibits the swift and effective review of content. For example, some DSC-appointed Trusted Flaggers have not provided legal reasoning for why they reported content or why they reported whole accounts for review when their intention was to report a single piece of content. Furthermore, like ODS bodies, the lack of a harmonised set of standards for the vetting of Trusted Flaggers is a gap leading to such operational outcomes.

86. To improve the quality of notices, DSCs should i) consider platform representations when awarding Trusted Flagger status and ii) develop processes under Article 22 (6) to allow platforms to refer Trusted Flaggers for consistently imprecise and inadequate notices. By contrast, Meta's own Trusted Partner Programme¹¹⁷ delivers high quality, well-contextualised and operationally actionable reporting. Meta has worked for over a decade with 400 NGOs in 113 countries through dedicated reporting channels. The effectiveness of our dedicated reporting channels largely stems from the criteria we rely on in choosing the organisations we onboard. The identification process is led by dedicated expert teams, who map relevant stakeholders and refer organisations for potential onboarding. These partners enable us to better understand local context, trends in speech, and signals of imminent harm.

Article 40 (4-11): Vetted researchers

87. The DSA introduced new requirements on VLOPs to provide access to data for vetted researchers, with the aim of facilitating what the Commission has described as a "deeper understanding of the systemic risks which are posed to society through the online world, as well as support effective oversight of DSA compliance"¹¹⁸. However, we have concerns about the practical implementation of the vetted researchers regime and the lack of detailed proposals for processing researcher applications. In order to implement the regime effectively, we believe the EC needs to ensure that:

- i. **Reasoned requests are assessed consistently, transparently, and proportionately.** DSCs should publish clear, detailed, written guidance for both applicants and VLOPs, setting out how they propose to assess, grant, and terminate applications. That guidance should address, among other things, DSC's proposals for verifying a researcher's affiliation to an institution and freedom from commercial interests and the adequacy of the researcher's technical, legal, and organisational measures. DSCs should also publish guidance or retrospective assessments of how they have judged whether a vetted researcher's proposal has met the requirements set out in Article 8 of the delegated act. Where a researcher has been vetted by one DSC, there should be clarity on how another DSC will consider that approval in its own processes; and
- ii. **User data is securely managed:** Data provided to vetted researchers may include personal data and the right to access under the DSA must be carefully balanced

¹¹⁷ Meta. (2026). Measuring Performance: Tracking Impact. Meta Transparency Center. Available at: <https://transparency.meta.com/governance/tracking-impact/measuring-performance/>

¹¹⁸ European Commission: FAQs - Data Access to Researchers - July 2025
https://algorithmic-transparency.ec.europa.eu/news/faqs-dsa-data-access-researchers-2025-07-03_en

against providers' obligations and users' rights under the GDPR. DSCs must have (or have access to) the expertise needed to adequately assess the technical and operational management of data by vetted researchers and to ensure appropriate safeguards are put in place. This reinforces the need discussed earlier in this response, to review the "personal data" definition to ensure legal certainty: because context always matters, there is no absolute definition. DSCs should be prepared to: 1 - consult with their national data protection authorities as part of the vetting process; 2 - engage with VLOPs on appropriate safeguards; and 3 - mandate specific data management practices.

Article 42: Transparency reporting

The DSA requires extensive public reporting including reports on the number of average monthly active recipients, moderation decisions, audit, and audit implementation, systemic risk assessment, and elections risk management. Other instruments, for example, the Terrorist Content Online Regulation, the CSAM derogation or the Audiovisual Media Services Directive require similar transparency reports. We recognise the value that transparency reporting can bring – in fact, Meta also produces voluntary global reporting on content enforcement – there is significant overlap in the current reporting process, which could be streamlined and made more efficient. The Commission should look to simplify reporting obligations across the digital rulebook without losing the benefits of transparency.

Article 91: Draft EDPB Guidelines 3/2025 on the interplay between the DSA and the GDPR

88. We have raised significant concerns with the EDPB in relation to their draft guidelines on the interplay between the DSA and GDPR. In their current form, the guidelines stray far beyond the scope of personal data protection into content regulation. This draft guidance, in its current form, risks exposing companies to conflicts of law, driven by the misreading of DSA duties and business realities by authorities that lack competence in this area. We noted a number of specific concerns in our recent response to the EDPB consultation which are of particular relevance, given the Fitness Check's desire for regulatory coherence. The draft guidelines:

- i. **Conflate routine processing with qualifying automatic decision-making:** The EDPB appears to consider that content moderation decisions may fall under Article 22 GDPR. Extending Article 22 (and therefore restrictions on automated decision-making) to routine removal decisions that are essential for user safety runs contrary to the DSA's objective of the swift take-down of illegal content. A content moderation decision is also not within the narrowly-defined scope of Article 22 (a decision with significant legal effect); and
- ii. **Transform interpretive guidelines into unauthorised lawmaking:** The draft guidelines suggest that any collection or processing of personal data for profiling purposes, while a non-profiling option is active, should be prohibited. That restriction is not found in either the DSA or the GDPR and so is another example of regulatory overreach. Likewise, the draft guidelines suggest that platforms should

present options for non-profiling and recommender systems equally. This falls outside the GDPR's remit, is an unjustified interference on the fundamental freedom to conduct a business, and goes beyond the DSA's text, which only mandates that at least one non-profiling option be provided and accessible, without specifying when options must be presented or requiring prior opt-in.

5.8 | Batteries Regulation

89. The EU Batteries Regulation, especially Article 11, is a clear example of how good intentions met with poorly designed rules undermine innovation, competitiveness, and even environmental goals in Europe. Wearables present a major opportunity for Europe, and a significant boost for European innovation, which makes such a regulation all the more confusing. AI wearables represent the next generation of personal computing with a global market expected to reach \$139B by 2029.¹¹⁹ Unlike most tech sectors where Europe trails competitors, wearables is an area where European companies lead globally. EssilorLuxottica, a French-Italian company with which Meta collaborates to deliver AI wearables, could be to Europe what Samsung has been to South Korea — creating an ecosystem for a critical global technology.

90. Europe excels at refined, distinctive, and aesthetically pleasing design best exemplified in the eyewear sector. Design is part of the fabric of Europe – it is a significant component of cultural identity evident in everything from European cars to fashion. The combination of aesthetics and design talent means best-in-class wearables which are functional but also stylish and a pleasure to wear. Thanks to European engineering, wearables can also deliver intensive AI capabilities – such as high-resolution displays and real-time inference – while maintaining all-day battery life. This all has positioned European wearables at the forefront of the global market.

91. The regulation's requirement that all portable devices—including AI wearables—placed on the EU market after early 2027 have replaceable batteries puts this opportunity at risk.

92. Key Issues:

- i. **Regulatory cliff edge:** The current implementation timeline of Article 11 of the Batteries Regulation is unworkable and inconsistent with the EU's Better Regulation agenda. With only 1 year remaining until the rules start applying in February 2027, manufacturers of highly complex products have no clarity as to whether their product category requires a user or professional replacement design. This does not leave sufficient time to incorporate the needed hardware design changes and perform all necessary engineering validation and compliance testing. This is not a feasible transition; it is a regulatory cliff edge.
- ii. **Technological reality ignored:** AI wearables must be lightweight, compact, and robust. Mandating removable batteries forces manufacturers to compromise on

¹¹⁹ MarketsandMarkets, Wearable AI Market — Global Forecast to 2029 (March 2024). The report projects the wearable AI market to grow from USD 62.7 billion in 2024 to USD 138.5 billion by 2029, at a CAGR of 17.2%. Available at: <https://www.marketsandmarkets.com/Market-Reports/wearable-ai-market-168051207.html>

water resistance, design, and user comfort making products bulkier and less competitive globally.

- iii. **Safety risks:** Access to miniaturised batteries increases the risk of electrical hazards, fires, and device failure.
- iv. **Circularity goals undermined:** The regulation contradicts the EU's Circular Economy and Ecodesign objectives. Removable batteries in wearables lead to shorter battery lifespans, more frequent device replacements, and increased electronic waste. Most small batteries are not collected for recycling,¹²⁰ so the policy may worsen, not improve, waste outcomes.
- v. **Competitive disadvantage:** European companies leading in wearables (e.g. EssilorLuxottica and Meta's Ray-Ban AI glasses) face constraints not imposed elsewhere, risking Europe's innovation lead and market opportunity.

93. Article 11's rigid approach fails to account for the realities of AI wearables, threatens safety and innovation, and risks undermining both environmental and economic objectives, while providing a totally unworkable timeframe. A pause and review of Article 11 is urgently needed.

5.9 | Representative Actions Directive (RAD)

94. The RAD enables litigators to scale low-value claims and multiply legal uncertainty, undermining the EU's goal of a stable legal environment and the ability of policymakers to design rules that promote competitiveness. The RAD should be reassessed as part of the Digital Fitness Check, with the aims of:

- i. preventing duplication and forum shopping that benefits claimant law firms and organisations more than data subjects and consumers;
- ii. limiting its applicability where relevant EU-wide regulatory bodies or harmonisation mechanisms already exist, as is the case for laws like the GDPR and DMA; and
- iii. ensuring this instrument cannot be exploited for profit or ideological ends contrary to the aim of an innovative and digital-forward Europe.

5.10 | Cybersecurity framework

95. The EU's cybersecurity landscape is a patchwork of overlapping, and at times conflicting, legal instruments, including the NIS2 Directive, the Cyber Resilience Act (CRA), the GDPR, and the EU AI Act. This fragmentation creates significant legal uncertainty and imposes a substantial compliance burden, particularly in the critical area of incident reporting. The Digital Fitness Check should review this framework, realising the opportunity to reduce that uncertainty and burden, without in any way compromising the protections offered by the cybersecurity framework.

¹²⁰ Eurostat. (2025). Waste statistics — recycling of batteries and accumulators. Data extracted November 2025. Available at:

https://ec.europa.eu/eurostat/statistics-explained/index.php/Waste_statistics_-_recycling_of_batteries_and_accumulators

96. While the Commission's Digital Omnibus proposal to create a Single-Entry Point (SEP) for incident reporting is a welcome step towards procedural simplification, it does not address the underlying substantive fragmentation. Companies will still be required to navigate a maze of different legal triggers, definitions, and liability consequences across multiple regimes. A single portal does not solve the problem if a company must still perform multiple, parallel legal assessments for the same incident to satisfy the requirements of NIS2, the GDPR, and the CRA.

97. To achieve a truly harmonised and effective cybersecurity framework, we propose the following reforms:

- i. **A single, unified legal notification standard:** The EU should move beyond procedural consolidation to providing for a single legal notification. This would involve creating one unified legal standard for incident notification that satisfies the requirements of all relevant legislation. This requires harmonising the core legal concepts: (1) a single definition of what constitutes a 'significant incident'; (2) a unified trigger for when a company is considered 'aware' of a breach; (3) acceptance of reports in a single common language; (4) align to the longest applicable timeframe where multiple regimes apply; and (5) a common methodology for assessing 'high risk' to individuals or services.
- ii. **A common EU incident taxonomy:** The current approach of allowing sector-specific incident taxonomies perpetuates fragmentation. The EU should develop a single, cross-sectoral EU incident taxonomy that unifies incident types (e.g. availability, integrity, confidentiality, supply chain), severity levels (e.g. 1-4), and impact dimensions (users, services, data, financial loss). This would establish a common language for describing the types, severity levels, and impact dimensions of cybersecurity incidents, enabling more effective data aggregation, better analytics, and reduced risk of inconsistent enforcement at the EU level.
- iii. **A horizontal baseline of security controls:** Instead of specifying bespoke risk management requirements in each new piece of legislation, the EU should establish a horizontal baseline of cybersecurity controls common across all regimes. This would create a clear, predictable, and technology-neutral set of security measures that companies can implement, with sector-specific additions only where strictly necessary. This approach, based on established international standards (e.g. ISO 27001, NIST Cybersecurity Framework), would reduce compliance costs and improve the overall security posture of the EU. Compliance with recognised frameworks should be accepted as valid supporting evidence across multiple legislative instruments, reducing compliance costs and avoiding duplicative audits.
- iv. **Mandatory mutual recognition:** To combat national 'gold plating' and divergent interpretations, the framework must include specified reporting fields, with no capacity for Member States to exceed those fields, along with mandatory mutual recognition of cybersecurity assessments and certifications across all Member States. If a product or service is deemed secure in one Member State, it should be accepted as secure in all others, with ENISA empowered to issue binding guidance to ensure consistent application.

6 | Conclusion

98. Europe stands at a crossroads. It can continue down the path of regulatory proliferation, accepting the managed decline of its digital economy as an unavoidable consequence. Or it can choose a different path: one of bold, structural reform that unleashes the innovative potential of its businesses and citizens. The Digital Fitness Check is the moment to make that choice.

99. This submission has outlined a clear, evidence-based agenda for reform. It is an agenda that calls for a fundamental shift in the EU's regulatory culture, from one that prioritises process to one that prioritises performance. It is an agenda that demands a relentless focus on simplification, harmonisation, and evidence-based policymaking. And it is an agenda that recognises that in the global race for technological leadership, standing still is falling behind.

100. Meta is committed to partnering with the EU on this journey of renewal. We believe that a more competitive, innovative, and prosperous Europe is not only possible, but essential. We urge the Commission to seize this opportunity to build a regulatory framework that is fit for the future, and to send a clear signal to the world that Europe is once again open for innovation.