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EU REGULATION AND INSTITUTIONS FOR DIGITAL COMPETITIVENESS

ISSUE PAPER

November 2025

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Executive Summary

Europe's digital competitiveness is constrained by fragmented and in some cases low-quality regulation, an incomplete single market, and institutional inefficiencies at the EU and national levels. Despite decades of proposals for regulatory reforms, implementation of these reforms has made little progress due to weak coordination among EU institutions, conflicts of interest within key bodies, and insufficient enforcement capacity. To foster innovation, growth, and strategic autonomy, the EU must rethink its regulatory frameworks and the institutional mechanisms that underpin them.

Regulatory design remains a critical barrier to innovation and growth. Overly complex rules, a lack of technological neutrality, excessive regulatory requirements imposed in sectors that discourage the entry of young European firms, and fragmented implementation slow the emergence of new technologies and limit the ability of firms to scale across Europe. Regulatory objectives are often poorly aligned with market realities, which constrains the EU's ability to support both incremental improvements and disruptive innovation. At the same time, trade-offs between technological neutrality, consumer protection, and strategic autonomy remain unresolved.

To address these challenges, **innovation should be a clearer and more prominent objective of EU regulation, and integrated into impact assessments** so that policy-makers are forced to consider the potential impact of all policy initiatives on growth and competitiveness. Risk-tolerant, technology-neutral approaches should be applied particularly in emerging sectors such as artificial intelligence, digital services, and regulatory frameworks should be designed to allow iterative adaptation through sandboxes and pilot programs.

At the same time, harmonisation of standards across member-states is necessary to complete the **digital single market** and facilitate the scale up of national industrial successes. The Commission should also identify and address areas where existing regulation does not today reflect principles of better regulation in ways which harm the interests of European firms, before using regulation to tilt the playing field in favour of European companies. Stringent regulation can sometimes be justified by public policy objectives – but it should not be imposed without a careful impact assessment, including assessment of the impacts of regulation on innovation. More stringent regulation is not justified merely because it impacts sectors where European companies are not present: otherwise it risks creating a self-fulfilling prophecy.

The **process of making regulation also needs to be improved**. Evidence-based policy-making is essential. The EU institutions should strengthen ex ante impact assessments identifying better the causality links between rules, conducts of firms and consumers and innovation and long-term consumer welfare. They should also strengthen ex post evaluations, using iterative frameworks to refine policies before they are formally adopted. In addition, the Commission should adopt measures to **help scale-up national policy successes** – giving member states strong incentives to adopt best-practice regulatory approaches and praising good performers, 'naming and shaming' member states that do not perform well.

To adapt to the rapid technological change in many markets, European regulators should draw on **responsive and participatory regulation**, which emphasises the strategic use of external actors to

enhance compliance and oversight, and use mechanisms like regulatory sandboxes and use of big data to lower the burdens of regulation

However, regulatory reform – and changes to the process of making regulation – are insufficient. Recommendations in these areas do not address the underlying **reasons why delivering a competitiveness agenda has proven so difficult for the EU and national institutions**. Weak coordination between policy areas, fragmented enforcement regimes, and overlapping responsibilities among institutions have long impeded the delivery of competitiveness-enhancing reforms.

Policy alignment between the European Commission, member-states, and national regulators is essential, particularly in industrial, digital, and innovation policies. Likewise, **regulatory coordination must extend across countries and legal fields**. A systemic approach could involve establishing a European Digital Agency (EDA) to oversee pan-European digital regulation, complemented by national digital regulators responsible for implementing EDA decisions, monitoring compliance, and resolving disputes. Smaller firms could remain under the direct oversight of national regulators, ensuring proportionality and local responsiveness. Moreover, funding instruments such as the European Competitiveness Fund should be managed with independent technical oversight and with long-term approaches to ensure continuity beyond the tenure of individual Commissions. Such measures would reduce political interference in funding decisions and improve the allocation of resources toward growth-enhancing projects.

The European Commission itself must also address internal conflicts arising from its multiple roles as legislator, enforcer, evaluator, and geopolitical actor. Evaluating its own legislation can bias assessments, geopolitical priorities may conflict with impartial regulation, and legislative and enforcement responsibilities can create reluctance to penalize member-states. To mitigate these tensions, the **Commission should implement greater internal separation, dedicating distinct teams to legislation, enforcement, evaluation, and industrial strategy**. More ambitiously, structural reorganisation could divide the Commission into separate entities: a geopolitical executive for strategic decision-making, a regulatory authority to ensure impartial enforcement, and an internal market agency to manage competition and industrial policy. At the same time, building robust in-house **technical expertise, including engineers and data scientists**, is essential to reduce dependence on external consultants and ensure high-quality, context-specific policy advice.

Independent oversight and judicial capacity are equally important. The Court of Justice of the European Union must handle preliminary rulings efficiently to ensure coherent interpretation of EU law across member-states, while consideration should be given to establishing regional courts to manage technical and specialized cases more effectively. Similarly, the **European Court of Auditors** (ECA) should be empowered to conduct regular, systematic evaluations of legislative and regulatory outcomes. By collaborating with national audit offices and research institutions, the ECA can provide credible, evidence-based assessments that inform policy reform and improve transparency. Strengthening these mechanisms would reinforce public trust and ensure that enforcement, evaluation, and interpretation are conducted impartially and efficiently.

Ultimately, **Europe's competitiveness depends on the effective integration of innovation-friendly regulation with strong institutional governance**. Completing the single market for services and digital sectors, adopting risk-tolerant and iterative regulatory approaches, aligning funding instruments with

strategic priorities, and strengthening oversight and enforcement capacity are all necessary steps. By improving policy coherence, institutional performance, and regulatory effectiveness, the EU can enhance its global economic position while safeguarding fairness, consistency, and strategic autonomy. Success will require both visionary policy design and disciplined, evidence-based implementation, ensuring that Europe can anticipate emerging challenges and respond proactively to secure long-term growth.

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About CERRE

Providing high quality studies and dissemination activities, the Centre on Regulation in Europe (CERRE) is a not-for-profit think tank. It promotes robust and consistent regulation in Europe's network, digital industry, and service sectors. CERRE's members are regulatory authorities and companies operating in these sectors, as well as universities.

CERRE's added value is based on:

- its original, multidisciplinary and cross-sector approach covering a variety of markets, e.g., energy, mobility, sustainability, tech, media, telecom, etc.;
- the widely acknowledged academic credentials and policy experience of its research team and associated staff members;
- its scientific independence and impartiality; and
- the direct relevance and timeliness of its contributions to the policy and regulatory development process impacting network industry players and the markets for their goods and services.

CERRE's activities include contributions to the development of norms, standards, and policy recommendations related to the regulation of service providers, to the specification of market rules and to improvements in the management of infrastructure in a changing political, economic, technological, and social environment. CERRE's work also aims to clarify the respective roles of market operators, governments, and regulatory authorities, as well as contribute to the enhancement of those organisations' expertise in addressing regulatory issues of relevance to their activities.

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1. What is holding back competitiveness?

1.1. Policies and regulation

Regulation serves a critical function in the European Union. With limited powers to spend, conduct foreign policy, or over security and defence, the **Union's most powerful tool is to regulate**.[1] Furthermore, **common regulation is the cornerstone of Europe's biggest economic achievement: its single market**. A more complete single market would intensify competition and innovation across Europe: helping the most innovative firms scale quickly and forcing laggards to leave the market, while providing stronger incentives for local innovation.[2] While the single market for goods is well-developed, in services the EU lags behind, despite the services sector accounting for around 70% of the EU's economy.[3] The International Monetary Fund estimates that internal barriers to the single market are equivalent to a tariff of 44% for goods and 110% for services.[4] Recommendations to deepen the single market have been repeatedly made in reports for the European Commission over the last 30 years – but progress has stalled and, in some areas, integration is even in reverse.[5] European policy-makers know which regulatory reforms are needed – the Draghi report reiterated many important recommendations made in previous reports on the EU single market – but the EU and national institutions and law-making processes have proven unable to fully deliver them.

Despite the important potential role for regulation in improving Europe's competitiveness, the narrative is now turning against it. Regulation can either help or hinder innovation and growth depending on the context and design.[6] The reports by Mario Draghi and Enrico Letta have echoed concerns by businesses and part of the academic literature that EU regulation has gone 'too far', and is excessively complex and burdensome.[7] In the last political cycle, there was at times a desire by EU law-makers to regulate quickly rather than to regulate well, and there is now some recognition that a number of the EU's recent laws, particularly those addressing sectors of the economy with high innovative potential, were not always well-designed. In response, the Commission is currently focused on a simplification exercise.[8] However, **there is an unanswered question about whether the problem is limited to regulatory design – or whether the EU's regulatory standards are too demanding, and the bloc's rules are too risk-averse.**

Even among some of those who acknowledge the importance of regulation, **there is increasing support for the view that Europe's approach to regulation is naïve and must evolve to more proactively support European firms, infrastructures and innovations**. At least on paper, Europe has traditionally adopted principles of better regulation – including principles of technology-neutrality, of

[1] G. Majone (1994) 'The rise of the regulatory state in Europe', *West European Politics* 17(3), 77-101.
[2] Communication from the Commission of 21 May 2025, A Strategy for making the Single Market simple, seamless and strong, COM(2025) 500.
[3] European Commission 2025 Annual Single Market and Competitiveness Report, COM(2025) 26.
[4] https://www.imf.org/en/News/Articles/2024/12/15/sp121624-europes-choice-policies-for-growth-and-resilience
[5] For instance, in telecoms, there are fewer operators providing services in multiple member-states than 15 years ago; the reason of this retreat – which may be financial, economic, political or regulatory – should be further explored.
[6] A. Bradford, The False Choice between digital regulation and innovation, Northeastern Law Review 119(2), 2024, 337.
[7] M Draghi, The future of European competitiveness; Part B: In-depth analysis and recommendations, Report to the European Commission, 2024; E. Letta, Much more than a market: Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens, Report to the Council, 2024.
[8] Communication from the Commission of 29 January 2025, A Competitiveness Compass for the EU, COM(2025)30.

not discriminating between local and foreign players so that only the most competitive survive, and of depoliticising the enforcement of laws.[9] But this approach is under pressure as Europe's major trading partners are closing their markets and threatening to weaponise Europe's dependencies in order to retaliate against European regulation of their companies. To boost the bloc's digital sovereignty, **there is growing demand for regulation and institutions to play an active role in furthering European industrial policy and economic security**.

1.2. Governance and institutions

However, the European competitiveness problems may have more profound roots than regulation: lower-quality regulation may simply be a consequence of the governance and the institutions of Europe. In fact, few of the reforms set out in the Draghi Report – not only those on regulatory simplification, but also to boosting public and private investment, and improving the innovation ecosystems in Europe – are new. Most have been on the EU's agenda for decades, including in the Delors Report of 1993, the Lisbon Strategy of 2000 and in Mario Monti's single market strategy of 2010.[10] There are remarkable similarities between these reports, and yet again for the Draghi Report, delivery is too slow.[11] The problem for the EU is not identifying what to do: instead, the real problem is understanding and addressing why the EU and national institutions seem unable to deliver. This requires an analysis of the EU's current institutional capabilities and incentives to deliver a competitiveness agenda and how they could realistically be changed.

One factor is the **Commission's increasingly political nature among the EU institutions. This has meant a growing desire by the Commission to be seen to be "doing something", and doing something quickly, in response to crises.** The Commission's politicisation has also changed the nature of the Commission's role.[12] Its current powerful status differs from the technocratic role which the Commission had originally been intended to have – which was meant to be a counterweight to the more explicitly political institutions of the Parliament and the Council of Ministers. The politicisation of the Commission means that there is no longer a law-making body among the EU institutions which performs the 'technocratic' role of holding law-makers to account, insisting on regulatory good practice, and taking an expert and evidence-based approach. Increasingly, this role has shifted to institutions like the Regulatory Scrutiny Board within the Commission and the European Court of Auditors outside the Commission, which (as noted below) are lacking in the resources commensurate to their (growing) importance.

A related factor is that the **Commission leadership increasingly sees itself as needing to be popular for its own survival**. Prior to Brexit, many member-state governments might have been privately content to see Brussels imposing economically sensible laws even if they were unpopular - while at the same time publicly criticising the EU for the imposition. However, Brexit appears to have shown that such a strategy can dramatically backfire. Since then, the Commission has been particularly keen to address its perceived lack of popularity and legitimacy. However, this has contributed to an approach where the Commission tends to promise too much – making it difficult to openly and

[9] Commission Staff Working Document of 21 November 2021, Better Regulation Guidelines, SWD(2021) 305.
[10] Mario Monti, 'A New Strategy for the Single Market: at the Service of Europe's Economy and Society', 9 May 2010.
[11] European Policy Innovation Council, *The Draghi Observatory* (2025).
[12] L. van Middelaar, *Alarums and Excursions: Improvising Politics on the European Stage*, Columbia University Press, 2019.

transparently make evidence-based trade-offs which admit that difficult reforms have losers as well as winners.

A third factor is the **multiplication of the roles of the Commission, some of them being in tension**. In recent years, the Commission has seen its role increasingly be to champion legislative proposals. As the narrative shifts away from regulation and the EU's focus has had to turn towards areas like coordinating industrial policy and defence, the Commission increasingly relies on having member-states behind its proposals. This has led to a relationship where the Commission is a 'deal maker' with member-states, standing in sharp conflict with its role as a guardian of the EU law – and in particular the single market - which may need to take action against member-states where they fail to faithfully implement EU law.

Fourth, the Commission has become an increasingly bureaucratic institution, with implementation of policies often siloed within Directorates-General (and sometimes to individual teams) and insufficient coordination within the Commission. This has made it **more difficult for the Commission to identify where trade-offs between different policy goals need to be made and to address them in an evidence-based way up-front. And to make things worse, during the legislative process, those trade-offs are often only dealt with thanks to the now too common 'without prejudice' clause**, leaving them to be managed belatedly and often less transparently at the implementation stage.[13]

Fifth, the **European Parliament at times appears to advance an expansive rights agenda, sometimes to the detriment of other policy values and interests**. Several factors may contribute to this tendency, though a full exploration lies beyond the scope of this paper. Two possible explanations are, first, that rights-based regulation is among the more straightforward agendas for the Parliament to promote, and second, that championing rights offers a relatively accessible means of enhancing institutional legitimacy—particularly given that European elections often fail to generate clear, EU-level mandates due to their predominantly national focus. This expansive rights agenda is further reinforced by the Court of Justice, as evidenced, for example, in its interpretation of the GDPR.[14]

Sixth, in a political climate marked by rising populism and short-term electoral pressures, **Member States are often reluctant to support EU-level reforms that entail immediate costs in exchange for longer-term benefits. Even when such EU legislation is adopted, its transposition or implementation at the national level may diverge significantly**—sometimes involving additional requirements or "gold-plating."[15] As already noted, these practices risk undermining the coherence and functioning of the internal market.

[13] This is illustrated, for example, in the treatment of security issues in the Digital Markets Act, where the law only set out high-level principles (some of which assumed no conflict between the law's goal of contestability and other laws' objectives of improving cybersecurity): Z. Meyers, *Balancing security and contestability in the DMA: the case of app stores*, European Competition Journal, 20(3), 2024.
[14] Orla Lynskey, *The Foundations of EU Data Protection Law*, Oxford University Press, 2015.
[15] Mario Draghi, *The Future of European Competitiveness*, 2024.

2. Better Regulation for Competitiveness

This second section sets out the policy and regulation the EU should achieve in order to boost the bloc's ability to innovate and in this way sustainably increase its competitiveness, focusing on several specific issues: policy objectives, regulatory design, regulatory making and regulatory implementation.

2.1. Innovation Objectives and Metrics

As explained in the companion issue paper on competitiveness and digital transformation, the EU has two pathways to become more competitive.[16] The first path is to focus on pursuing incremental innovation and reducing costs. Adoption of digital technologies like AI – which, as a general purpose technology, will have applications in many economic sectors – by European businesses may help unlock new innovations and efficiencies, and help sustain the competitiveness of many important European exporting sectors. However, relying solely on reducing costs looks like a precarious approach in the long run, given the scale and industrial model pursued by China – which is fast encroaching on many of the sectors where Europe thought it had an enduring competitive advantage – and the widespread use of subsidies and tariffs, which is undermining the ability of countries to rely on comparative cost advantages. The second path is to **create and commercialise innovation which leads to more sustained increased productivity and economic growth over time**.[17] Innovation requires an ecosystem of enabling factors such as the availability of risk-tolerant and patient capital, a policy environment which tolerates failure and rewards success, an enabling regulatory framework, supporting infrastructures and energy, and the availability of skills. Leading in innovation is the only way in which the EU can sustainably boost its competitiveness.

This is why innovation should be a clearer and more prominent objective of EU regulation. As recalled in the Draghi Report, that is particularly important for digital markets where innovation is rapid[18] and is a key dimension of competition, and where the EU does not currently have many champions. In these markets, regulators will need to ensure they are not excessively focused on prices but also on investment and innovation, as long as these benefits are well-evidenced. This is because innovation tends to provide greater benefits to consumers than price decreases over the long run.[19] Too static an approach to supporting competition can therefore be detrimental and regulators must therefore think carefully about whether their approaches unnecessarily make it harder for firms to enter or leave markets.

At the same time, **policy-makers need to remain aware of the risk that even pro-innovation regulation can become 'entrenched' and remain unchanged for too long**. Even well-designed regulation which initially creates space for more innovation and competition may have some long-term negative consequences if it ossifies the market, encouraging businesses to rely excessively on regulation, which can be a low-risk business option, rather than their own capacity to take higher-risk,

[16] A. Manganelli, *Competitiveness, Digital Transformation and EU Policies*, CERRE, 2025.
[17] Ph. Aghion, C. Antonin, S. Bunel, *The Power of Creative Destruction: Economic Upheaval and the Wealth of Nations*, Harvard University Press, 2021. This kind of economic growth is supposed to expand the "size of the pie," increasing the potential for shared prosperity and welfare improvements, making it compatible with the idea that relations between countries may be characterised as a "positive-sum game" rather than a "zero-sum game".
[18] European Innovation Scoreboard 2025.
[19] See note 17.

higher-reward bets. This means even good regulation must be kept under frequent review, and the balance between promoting competition and promoting innovation may change over time as market and technological changes occur.

Good regulation also requires the development of innovation metrics that enable a robust, evidence-based assessment of a regulation's effects, strengths, and weaknesses. Admittedly, this is challenging: the relationship between regulation and innovation is complex, and innovation itself takes many forms and arises from diverse sources. Nevertheless, for each new EU regulation, it should be possible to identify the causal channels through which it may foster—or hinder—innovation, and subsequently assess, during regulatory implementation, whether these causal mechanisms materialise in practice.

Such analysis must also acknowledge that **not all innovation is of equal value**. Disruptive innovation, for instance, often yields more significant long-term economic gains than incremental innovation. While incremental improvements remain important, difficult questions arise when policy choices involve potential trade-offs between supporting incremental versus disruptive innovation.[20] Likewise, some forms of "innovation" may deliver limited or even negative economic effects, or may conflict with European social or cultural norms.[21] In these circumstances, there may be legitimate reasons for policymakers to steer innovation in particular directions, even if doing so may slow the overall pace of innovation.

2.2. Regulatory design and principles

2.2.1. Single market and discrimination intra-EU

One of the main bases of the EU's economic strength is its single market. Fundamentally, the single market is a promise of non-discrimination within the EU. Once a firm is licensed or authorised in one Member State, it should be able to provide its goods and services in any other part of the EU. In goods, the single market has boosted the EU's growth by promoting intra-EU growth at times when global trade was facing enormous challenges.[22] In contrast, the digital single market, in particular, is still far from being completed as sometimes member-states continue to pursue their own national interests rather than the European interest. The steps needed to complete the digital single market are well understood and are comprehensively described in both the Draghi and the Letta reports. Yet many important reforms remain unimplemented,[23] meaning that there are many areas where digital and telecoms firms must still struggle to negotiate individual member-state laws and regulations if they want to grow in scale across Europe, which drives up costs and limits competition. There are different reasons for this.

First, the **adoption of an EU law often does not mean full harmonisation - having the same rules across the single market** - **in practice** for several reasons:

[20] This trade-off was at the core of the DMA: See A. De Streel and P. Larouche, *The European Digital Markets Act: A Revolution Grounded on Traditions*, Journal of European Competition Law & Practice 12(7), 2021, 542-561.
[21] K. Yeung and S. Ranchordas, *An Introduction to Law and Regulation: Text and Materials*, 2nd ed, Cambridge University Press, 2024.
[22] L. Cernat, *The Critical Importance of the Single Market for Europe's Global Trade Performance*, ECIPE, May 2023.
[23] See note 11.

- If EU law takes the form of a directive, it must be transposed into national legislation, and the resulting laws often vary across Member States. In recent years, the Commission has sought to reduce its reliance on directives, favouring regulations, which are directly applicable. [24] However, even regulations frequently require accompanying national measures and enforcement is typically carried out by national authorities. These measures can lead to variations in how the regulation is applied across the single market. [25]
- In addition, some EU rules are unclear in practice because they result from complex political compromises, requiring interpretation by the courts at both national and EU levels. The EU Treaties provide a mechanism to ensure uniform interpretation through the preliminary ruling procedure, whereby a national court may refer questions to the European Court of Justice.[26] However, this process can take a considerable amount of time—sometimes several years—during which different Member States may continue to interpret and apply EU law inconsistently.

Second, **the enforcement of single market rules by the Commission through legal proceedings against Member States has declined in recent years**, reflected in a reduction in the number of infringement cases initiated.[27] While the Commission has defended this approach, arguing that a more collaborative relationship with Member States can often achieve better outcomes than strict legal action, there is limited evidence that this softer approach has been that effective. This may partly result from the Commission assuming a more political and influential role among EU institutions—particularly in proposing legislation that requires approval from Member States in the Council. In this context, the Commission may face difficulties in negotiating the adoption of its proposals while simultaneously acting as a stringent enforcer of EU law.

Third, **many of the remaining steps toward a fully functioning single market involve sensitive issues for Member States**.[28] Because the adoption of EU laws typically requires at least qualified majority voting—and in some cases unanimity—a small number of Member States can still block or delay reforms. This dynamic can be further reinforced by both internal and external geopolitical pressures, which may erode trust among Member States. While one might hope that heightened geopolitical risks would encourage Member States to cooperate in order to strengthen Europe's leverage with major global partners, in practice, increased risk awareness has led some national governments to adopt more protectionist policies. This can result both in slower adoption of EU legislation and in the application of national security measures in ways that make cross-border transactions within the EU more difficult and costly.

[24] For instance, the Data Protection Directive was replaced by the GDPR, and the E-Commerce Directive was complemented by the Digital Services Act which is a Regulation.
[25] For example, this is the case for GDPR, see the second Report on the application of the General Data Protection Regulation, COM(2024) 357.
[26] Article 267 TFEU.
[27] See https://www.siliconcontinent.com/p/the-myth-of-the-single-market; oonly 529 new cases were opened in 2023, the lowest in the last ten years.
[28] For example, member-states take different approaches to managing the risks associated with different telecoms vendors. And in areas like authorities' abilities to access telecoms firms' records for law enforcement purposes, member-states' practices and procedures vary dramatically.

To solve these problems, EU law-makers need to further **evolve its single market strategy[29] with a combination of steps which will require an overhaul of the EU's institutional design and ways of working**.

- First, **EU rules sometimes need to be clearer**, which could be achieved through more effective implementation of the Better Regulation guidelines across all EU institutions (see Section 2.3). Member States, in turn, should avoid "gold plating" and refrain from imposing more onerous or exacting requirements than those mandated by EU law when transposing directives or implementing regulations. [30]
- Second, creative solutions may be required to **overcome persistent Member-State vetoes** in areas where harmonisation would have the greatest economic impact. This could involve activating the passerelle clauses in the Treaties, which allow the European Council to shift from unanimity to qualified majority voting. [31] In addition, EU institutions could adopt a firmer and more transparent approach, publicly identifying Member States that block reforms and clearly communicating the economic costs of inaction.
- Third, **stronger systems of EU and national enforcement** are also necessary.[32] In addition, the Commission—or another designated single market authority—should strengthen the enforcement of single market rules, as discussed in Section 3.

2.2.2. Neutrality and discrimination extra EU

At the same time that differentiation between member-states remains stubborn and the single market remains incomplete, the EU also faces growing pressure to increase discrimination against firms outside the EU or with a connection to particular third party countries – in order to promote European digital sovereignty,[33] tackle threats to its economic security,[34] and maintain jobs in so-called strategic sectors like steelmaking in the bloc.[35]

Some of these calls represent a **fundamental shift in the direction of European regulation**, which has so far largely sought to apply the same standards to European and non-European firms alike in order to foster competition on a level playing field. This approach took the view that regulation should not 'pick winners', that tilting the playing field to promote European options would cost the economy more (by raising prices or reducing quality), and that good European solutions can emerge only when they have been proven to withstand competition.

As a first starting point, however, policy-makers – and those calling for change – need to **identify what 'European' means and what the qualifying criteria are**.[36] Is it about a firm's ownership, and what would that mean for publicly listed companies? Is it the location of their headquarters, staff, or assets? The definition will depend on the problem policy-makers are trying to solve, which is why policy-

[29] See note 2.
[30] Mario Draghi, *The Future of European Competitiveness*, 2024.
[31] Article 48(7) TEU.
[32] The Economist, *The sleeping policeman at the heart of Europe*, 3 July 2025.
[33] E.g. F. Bria et. Al., *EuroStack – A European Alternative for Digital Sovereignty*, 2025.
[34] Cmmunication of the Commission of 1 April 2025, ProtectEU: a European Internal Security Strategy, COM(2025)148.
[35] See, eg, the Commission's recent decision to hike steel tariffs: N. J. Kurmayer and T. Moller-Nielsen, *EU to hike steel duties to 50% in push for US tariff concessions*, Euractiv, 7 October 2025.
[36] See *Digital sovereignty for Europe*, EPRS Ideas Paper, July 2020.

makers need to be specific about their objectives. In some cases, those objectives may be in tension with innovation and competitiveness, as digital sovereignty has a (short term) price. For example, if policy-makers want companies to be immune from all foreign laws (including those like the US CLOUD Act which have extensive extra-territorial application), then the only European cloud companies which would qualify would be those that had no operations in the US, precluding them from providing a 'one stop shop' for European businesses with branches or operations in the US.

Secondly, rather than immediately accept the need to revisit the "neutral" approach of European regulation, **EU policy-makers could start by examining areas where its existing laws do not follow principles of better regulation – and where this could disadvantage EU firms vis-à-vis their global competitors**. As an example, consider technology neutrality. Technological neutrality can be seen as an application of the non-discrimination principle in matters relating to technology. It implies the law should not discriminate between technologies. In other words, functionally equivalent technologies should be treated in the same way and the same regulatory principles should apply to the same types of market actors regardless of the technology they use.[37] In practice, however, EU law has not always – and in some respects still does not – fully respect technology neutrality. This is especially true in light of the emergence of new digital services which have often avoided being regulated under existing frameworks, even when functionally similar services based on legacy technologies are regulated. This can risk imposing disproportionate regulatory burdens on European firms providing services based on pre-existing technologies, while imposing fewer burdens on global firms.

One prominent example is messaging. The EU's previous regulatory framework for telecommunications regulated "electronic communications services" (ECS), which were defined as including "the conveyance of signals on electronic communications networks". This meant that traditional voice telephony, SMS and the provision of internet access services were deemed to be regulated as ECS. However, services like internet-based message and calls were not regulated as ECS, since they sat "over the top" of an internet access service (which was itself an ECS). This created two tiers of regulation for services which were functionally the same, with more burdens on traditional telecommunications players (which were usually European) and fewer burdens on digital services firms (which were more often non-European). The resulting competitive distortions persisted until the Electronic Communications Code (EECC) removed the distinction.[38]

Similar concerns persist today and deserve attention. For example, European broadcasters commonly complain that the European regulatory environment imposes differential obligations on local broadcasters and online content providers which deliver services on demand – adopting the increasingly questionable assumption that local broadcasters are incumbents rather than underdogs. These include varying responsibilities regarding licensing, advertising, watershed rules, and local content requirements. Ensuring a 'level playing field' so that the same type of service is subject to the same rules – regardless of whether it is delivered as a broadcasting service or via the internet – might significantly help European firms without resorting to active discrimination.

These reforms do not require the EU to artificially tilt the playing field – instead they can address areas where EU law does not currently live up to the ideal of technology neutrality, and, as a result, imposes

[37] Z. Meyers, P. Larouche and D. Schnurr, *The AI Act and Technological Neutrality*, CERRE (forthcoming, 2025).
[38] The new definition of "electronic communications service" in the EECC was meant to encompass VoIP as well. In any event, by the time the EECC was adopted in 2019, the demise of traditional voice telephony meant the debate was moot.

disproportionate burdens on European companies and innovators. Even with such adjustments, it seems likely that in some areas the EU is unlikely to have successful firms either because it lacks comparative advantages or third countries are themselves tilting the playing field. This leads to the question of **whether and how regulation should provide artificial benefits to European companies**. There does not currently appear to be much political appetite for express discrimination. The EU's failure to agree a proposed cybersecurity scheme for cloud services, which would have imposed 'sovereign' requirements on its highest tier, illustrates this.[39] Similarly, the Commission has had to delay the publication of its proposed Cloud & AI Development Act proposal, which was intended to support European cloud and AI services, reportedly because the Commission has struggled to articulate a workable definition of 'European' solutions or to propose a politically palatable way to provide benefits to these solutions.

However, **discrimination is increasingly appearing in indirect ways in EU law and legislative proposals**. For example, in the framework for Financial Data Access (FiDA) proposal, law-makers are trying to exclude DMA gatekeepers from the regulated access to financial data to which financial services companies will be entitled.[40] Such indirect discrimination has some risk, especially when inappropriate proxies are used which might be ill-suited to achieve the EU's stated policy goals, or have unintended consequences. The exclusion of DMA gatekeepers in FiDA could be an example of poor regulatory design as the DMA does not preclude large tech firms from expanding into the provision of new types of services, such as financial services, in order to increase competition and innovation. If the concern is to boost European firms, then it is unclear why only a small number of firms are disadvantaged, and why they have been chosen for exclusion based primarily on the popularity of their different, non-financial services.

Another example of discrimination appearing in indirect ways is in European procurement law where there has been until now limited appetite for expressly discriminating against non-EU providers, but other criteria are being introduced to benefit EU firms. Despite Commission President von der Leyen referring to 'made in the EU' mandates[41], and Draghi pushing public procurement as a way to boost the European tech sector, breaching WTO laws seemed so far, a bridge too far for many EU member-states. Instead, the EU seems likely to rely on criteria like carbon emissions, sustainability and supply chain diversity – or require bidders to comply with European rules – which indirectly support the case for using European solutions. More assertive use of the EU's Foreign Subsidies Regulation in procurement practices – including its potential application to regulation which gives unfair advantages to local firms – could also help boost European firms**.** These options may have more short term economic benefits over an approach which more explicitly demands that public authorities use European solutions even when they do not offer the best value for money. In any case, **any external discrimination should only be applied after a thorough evaluation of its short- and long-term costs and benefits.**

[39] See A. Calcara, *European cloud computing policy: failing in Europe to succeed nationally?*, West European Politics, 2025.
[40] Proposal of the Commission of 28 June 2023 for a Regulation of the European Parliament and the Council on a framework for Financial Data Access, COM(2023) 360.
[41] https://y3r710.r.eu-west-1.awstrack.me/L0/https:%2F%2Fdmp.politico.eu%2F%3Femail=zach.meyers@cerre.eu%26destination=https:%2F%2Fec.europa.eu%2Fcommission%2Fpresscorner%2Fdetail%2Fov%2FSPEECH_25_2053/1/010201993c53438c-db409547-5879-4fa2-8627-4dc864665203-000000/nbpD3ZycokuKIpELiCS2lQWBEsI=443.

2.2.3. Risk based and proportionate

Another overarching question facing policy-makers is whether regulation in Europe is overly precautionary. That is, beyond excessive complexity, which is broadly agreed to be a problem, does Europe simply have regulatory standards which are too exacting, and therefore harm European companies?

Enrico Letta's report on the EU's single market recommended a two-step approach to fixing the bloc's regulation – with 'administrative' simplification being the first step, and a second step which involves a more 'political' negotiation about the objectives regulation seeks to achieve (including, presumably, the possibility of some deregulation).[42] At this stage the Commission has spoken very little about the second stage. Nevertheless, there are concerns that a more radical departure from the precautionary approach may be necessary.

On this question, the **extent to which EU regulation is precautionary can be overstated**, particularly in more recent digital regulation. The Digital Services Act's rules for very large online platforms and the AI Act's rules on AI deployment are good examples of 'responsible innovation'. [43] They do not dictate standards to be met – but instead require and expect firms to incorporate regulatory objectives (like the mitigation of systemic risks, in the case of the DSA) into the design of services from the start, relying more on overarching and flexible principles rather than strict legal requirements.

Even where EU regulations do take a stringent approach, this may not always impose a competitive disadvantage for the EU. Europe – given its relatively high wages and energy costs, and its limited labour flexibility – is not a low-cost production hub. For internationally tradeable goods and services, European firms cannot compete at the lower end of the market. This explains why so much of its export competitiveness lies in high-end, low-volume machines like aircraft, lithography machines, and high-end industrial equipment. In these sectors, the EU faces increasing competition from China, often supported by its own self-preferencing procurement practices and subsidies. In this context, high standards can help European firms because they avoid European products being undercut by cheaper, lower-quality substitutes in Europe. Of course, that may impose costs on European customers, who may then be required to buy higher-quality goods and services than they need, potentially making those customers less competitive than non-EU providers who can choose cheaper substitutes. However, if Europe can export its high regulatory standards (as it does with the Brussels Effect) then European customers will be somewhat protected from this competitive disadvantage – and this may equally help European products be more competitive in export markets.

However, these considerations do not justify blithely imposing high standards. Instead, they require a careful assessment of how markets will respond to these standards (such as whether foreign companies will meet them more easily than European firms) and whether the costs to European customers of paying higher prices justifies any benefit to European producers. This must be led by evidence, not just hypothesis.

Another reason for maintaining high regulatory standards is where they instil trust in technology. European consumers and business customers can be more risk-adverse than those in other countries.

[42] E. Letta, *Much More than a Market: Empowering the Single Market to deliver a sustainable future and prosperity for all EU citizens*, April 2024.
[43] T. Wheeler, *Techlash: Who Makes the Rules in the Digital Gilded Age?*, Brookings Institution Press, 2023.

This justification is often cited by the Commission as a reason for pressing ahead with tough regulation. However, again, this justification needs to be backed by evidence rather than assertion. Otherwise, the higher costs associated with high standards may impede technology take-up more than they improve it.

A bigger risk of strict regulatory requirements is that they are imposed in sectors where European companies are not present, on the basis that European legislators feel there is nothing for European firms to lose by imposing such requirements. The AI Act negotiations were a good example, where only the prospect of French AI firm Mistral becoming a European AI champion was enough to cause some legislators to rethink some of the more onerous proposals in the law. Mistral's political connections played a significant role in having its voice heard; most start-ups, by contrast, do not have such weight in law-making processes, or such start-ups may not exist yet. Imposing high standards in these contexts risk creating a self-fulfilling prophecy: standards are imposed because there is no European firm able to voice its objection, and the existence of onerous regulations makes it more difficult for European start-ups to emerge and scale. To tackle this problem, law-makers must think more dynamically about how markets might evolve, rather than only considering the loudest lobbying interests in front of them. Ironically, thinking dynamically may lead to the opposite of the current situation: with higher standards in sectors where European firms are strong, and looser regulatory standards where European firms are yet to emerge, to maximise their opportunity of doing so.

2.3. The process of making regulation

2.3.1. Better Regulation Principles

The **EU was previously renowned for the quality of its law-making, which was responsible for the famed 'Brussels effect'**, whereby law-makers in other parts of the world often looked to the EU for inspiration – or simply adopted EU laws. Anu Bradford has explained the reasons for the EU's powerful regulatory influence in the world: the EU's laws have often tackled problems which are globally understood to be of concern; the EU has often regulated in a way that reflects fundamental rights, reflecting values also held by many other jurisdictions; its laws have embraced the value of open markets, giving other countries strong incentives to align with EU standards to enable access to Europe's 450 million consumers; and its laws have often reflected good regulatory design – written in ways that can accommodate 27 different national legal systems and reflecting reasonable compromises between different national interests.[44]

However, the quality of the EU's law-making may have declined in recent years – with more laws being passed that lack a proper problem definition and are instead mostly performative, whose consequences have not been fully thought through by the EU legislature, and which do not always respect principles of better regulation. One the reasons for this is, in some cases, the failure to properly scrutinise laws when they are proposed by the Commission and adopted by the Parliament and the Council, and then when they are evaluated after some years of implementation.

To address this, the **principles and guidelines of Better Regulation should be more consistently and rigorously applied**. As the Commission itself explains, "Better regulation is about creating legislation

[44] A. Bradford, *The Brussels Effect*, Oxford University Press, 2019.

that achieves its objectives while being targeted, effective, easy to comply with, and imposing the least burden possible."[45]

Ex ante and ex post evaluation

To achieve this, **Commission ex ante impact assessments examine the problems to be addressed, the objectives to be achieved, the trade-offs involved, the available policy options, and their potential impacts.** One of the primary benefits of impact assessments is their ability to identify the causal links between: (1) the rules and the incentives they create, (2) the behaviour of firms, competitors, consumers, or citizens, and (3) the resulting benefits to users. [46] To prepare better regulation, these key causal relationships should be clearly articulated in the ex ante impact assessment, which requires explicitly outlining the 'transmission mechanisms' through which rules are expected to generate a chain of effects, each dependent on the preceding one. Lawmakers should avoid assuming causal links and should clearly distinguish between genuine cause-and-effect relationships and mere correlations.

Another significant benefit of impact assessments is their ability to highlight trade-offs associated with different policy options, which may be: (i) economic—for example, between regulation, competition, and innovation; (ii) non-economic—for example, between different fundamental rights; or (iii) institutional—for example, between EU-level and national-level intervention or enforcement.[47] Here again, to prepare better regulation, these key causal relationships should be clearly articulated in the ex ante impact assessment and not left for the implementation as it is too often the case currently.

To assess causal relationships and policy trade-offs, **impact assessments must identify the relevant indicators and then collect the data necessary to measure them**. These measurements should rely on the best available data, particularly from independent, high-quality academic studies, and may be supplemented by additional research conducted for EU institutions. When precise quantification is not feasible—as is often the case for forward-looking impact assessments—specific numerical estimates should be avoided, as they can be misleading; instead, approximate orders of magnitude should be used.

Moreover, for ex ante impact assessments to provide genuine added value in the adoption of new legislation, it is essential to establish **mechanisms ensuring that they are systematically considered and updated throughout *all stages* of the legislative process**. This is particularly important given potential discrepancies between the impact assessment conducted by the Commission at the time of a proposal's publication and the final text of the legislative act. [48] At the same time, more evidence-based impact assessments can lead to stronger proposals that are better able to withstand political negotiation and remain true to their original objectives. This approach aligns with the Interinstitutional Agreement of 2016 on Better Law-Making,[49] which foresees that the impact of any substantial

[45] 2021 Better Regulation Guidelines, p.1.
[46] M. Bassini, M. Maggiolino and A. de Streel, *Better Regulation and Evaluation for the EU Digital Rulebook*, CERRE Report, January 2025.
[47] The different effects of those trade-offs may also unfold in a different time frame. For example, positive short-term price effects may have longer term costs in terms of innovation, or more complex consumer choice may have more long-term benefits in terms of innovation.
[48] Also, Draghi Report, Part B, p.324.
[49] Interinstitutional Agreement of 13 April 2016 on Better Law Making, points 15-17. The mission letter of Dombrovskis states that he should 'lead the negotiations on a renewed inter institutional agreement on simplification and better law making.

amendment to a Commission proposal introduced by the European Parliament or the Council should be assessed by the institution introducing the amendment, potentially with support from the Commission.

Then when the law has been adopted and is implemented**,** *ex ante* impact assessment should be **complemented by *ex post* evaluation, embedded in the policy cycle to inform the appropriate adaptation of regulatory (or alternative) approaches**. This is because the traditional 'regulate-and-forget' mindset must give way to a dynamic 'adapt-and-learn' approach as recommended by the OECD.[50] *Ex post* evaluations should test the assumptions on which the impact assessments were based, and if some assumptions turn out to be incorrect, the laws need to be adapted. Moreover, each new evaluation should be built on the previous evaluations, taking into account newly available market data, and correcting mistakes from past evaluations. Finally, each evaluation should lead to concrete recommendations for law-makers to follow up upon.

Robustness and independence

To be effective, both ex ante and ex post assessments must ensure robustness and independence. The Regulatory Scrutiny Board (RSB), established within the Commission in 2015, has emerged as a credible body, at times issuing negative opinions on the quality of the Commission's impact assessments and evaluations, even on politically important proposals. The RSB issued two negative opinions on the impact assessment for the Corporate Sustainability Due Diligence Directive (CSDDD), for example. The RSB exerts some degree of political accountability over the Commission as decisions to entirely override its opinions have been rare (with the CSDDD a notable exception). However, the RSB faces substantial challenges due to its heavy workload amid the pace of recent EU law-making. It currently lacks the resources to scrutinise more than a small fraction of the Commission's ex post assessments. Moreover, the Board's independence may also be constrained over time, as it relies on the Commission for its secretariat, and several members are appointed from within the Commission and return to it after their tenure. These factors risk limiting the RSB's capacity to provide a fully critical and independent perspective, particularly when such criticism may be politically inconvenient.

Moreover, we recommend that **draft impact assessments and evaluation reports prepared by Commission staff be subject to public consultation prior to review by the RSB**. This would allow stakeholders, who often have access to better information and data than Commission staff, to provide input on the identified causal relationships and policy trade-offs, as well as on the selection and use of indicators and data. Stakeholders could also propose alternative indicators or sources of data. Based on the consultation's outcomes, Commission services should revise their draft reports and provide a separate explanation of how stakeholder feedback was taken into account. With this information, the RSB would be better positioned to conduct thorough quality control of the causal analyses, trade-off assessments, and data usage in impact assessments and evaluations.

This should ensure that teach institution assesses the impact and cost of its proposals and amendments in the same way with a simple and clear methodology.'

[50] OECD, *Recommendation of the Council for Agile Regulatory Governance to Harness Innovation*, OECD/LEGAL/0464.

2.3.2. Regulatory experimentation and scaling-up national success

Another way to improve EU regulatory making would be to scale-up national regulatory success.[51] Despite concern about the EU's overall inability to adequately support innovation and a globally competitive digital sector, there are in fact many pockets of success – showing that, with the right policy decisions and frameworks, Europe can support innovation while holding true to its values and without requiring fundamental reforms. Rather than just fret about the EU's many failures, therefore, policy-makers would be wise to look at examples of how member-states have been able to achieve success. Nordic countries, for example, have performed disproportionately well at fostering both large technologically sophisticated hardware manufacturers like Nokia and Ericsson, while also birthing many highly innovative digital platforms like Spotify. Rather than look solely to the US for inspiration, EU policy-makers could consider how to ensure that excellent innovation-friendly policies in one member-state are identified, explained, and can be disseminated to other member-states.

The Commission, for example, could put **greater focus on 'praising' good performers and/or 'naming and shaming' countries which have not performed well**. This would, however, require the Commission to be robust and act independently from its negotiations with member-states to pass new laws. Such a function may be better performed by an independent body or at least a part of the Commission insulated from political pressure.

Beyond these 'soft' persuasive measures, **the Commission is already playing a stronger role in helping to identify where countries have an innovation defect and giving them strong incentives to own these problems and address them**. For example, the EU's Recovery and Resilience Facility (RRF) – the pot of money allocated to stimulate the EU economy after Covid – provides an example of how the Commission could provide funds to member-states tied to specific projects or regulatory reforms. However, while the RRF was structured in a way that allowed member-states to set their own idiosyncratic objectives, the Commission has rightly proposed a more structured performance-related set of incentives to encourage member-states to make growth-enhancing reforms in the next budget.

While the single market is important, the EU should also recognise the value in some areas of enabling a diversity of regulatory approaches. The 'country of origin' principle – by which firms can have their products or services authorised in one member-state, and then other member-states are bound to accept those products or services through a system of mutual recognition – means that different member-states are allowed the freedom to adopt different approaches to authorising goods or services. This can encourage experimentation between member-states to adopt innovation-friendly and proportionate ways to implement regulation. Since the most successful of these will attract more firms to seek approvals in that member-state, the approach can encourage competition and may often be better than the Commission imposing a top-down 'one size fits all' approach.

Finally, the **EU may, for some policies, need to move away from consensus from all the member-states and seek more 'coalitions of the willing'**. In areas where this achieves success, other countries will join the coalition; where the experiment is a failure, the coalition can dissolve. The need for unity

[51] A good example of regulatory success scale up is the regulation of fibre deployment in the EU. France and Spain developed the best regulatory approach by relying on symmetric regulation of the passive infrastructures and then this success was scaled up over the whole EU.

has made it impossible to effectively implement the Draghi recommendations: positive measures to implement the Draghi Report were watered down in an effort to pre-empt blocks by member-states. One example proposed in the "European Way" papers is the idea of a Sovereignty Compact: a protocol which would enter into force once two-thirds of member-states, representing at least 70 % of the EU population and GDP, ratify it.[52] Once in force, certain budgetary decisions would be reliant on Qualified Majority Voting and get access to new resources like the Competitiveness Fund.

2.4. Regulatory implementation

Regaining EU competitiveness in an increasingly digital and globalised economy requires not only robust legal frameworks but also effective implementation and enforcement of those laws. The rapid evolution of digital technologies and markets presents unique challenges that traditional regulatory approaches may struggle to address.[53] To meet these challenges, regulators should draw on the insights of scholarship in **responsive and participatory regulation, which emphasises the strategic use of external actors to enhance compliance and oversight**. [54] In this model, the regulator functions as an orchestrator of a broader compliance ecosystem, leveraging multiple stakeholders to ensure that laws are not only well-designed but effectively applied. [55] This approach involves coordinated action across three key actors:

- *Regulated Firms:* Firms themselves are central to effective enforcement. Regulators should adopt an "enforcement pyramid" approach, beginning with persuasion and guidance and escalating to sanctions only when necessary. This strategy encourages companies to develop strong internal compliance systems, establish dedicated compliance functions, and implement robust reporting mechanisms. By fostering a culture of co-regulation and accountability, firms become active partners in achieving regulatory objectives.
- *The Market:* Competitors, business users, and end-users can serve as valuable monitors of market behavior. Regulators should empower these actors to report violations and contribute insights that inform the design of effective regulatory remedies. This market-based engagement increases the detection of non-compliance, promotes fair competition, and ensures that regulatory interventions are grounded in real-world market dynamics.
- *The Broader Community:* Civil society organisations, public interest groups, and independent auditors play a critical role in reinforcing oversight and accountability. Their involvement can provide transparency, amplify public trust, and bring additional expertise to complex regulatory challenges. Engaging these actors helps to ensure that regulatory frameworks serve the public interest and are responsive to societal needs.

By adopting a participatory and multi-stakeholder approach, the EU can create a regulatory ecosystem that is both resilient and adaptive. This not only strengthens compliance and enforcement but also

[52] K. Zenner et al, *The European Way: A blueprint for reclaiming our digital* future, 27 May 2025.
[53] G. Nicoletti, C. Vitale and C. Abate, *Competition, regulation, and growth in a digitized world: Dealing with emerging competition issues in digital markets*, OECD Working Paper, 14 March 2023.
[54] I. Ayres and J Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate*, Oxford University Press, 1992.
[55] As already suggested fifteen years ago by T. O'Reilly, "Government as a Platform" in Lathrop and Ruma (eds) *Open Government: Collaboration, Transparency, and Participation in Practice*, O'Reilly Media, 2010, 11–40.

positions the Union to maintain and enhance its competitiveness in a rapidly evolving global digital economy.

In addition to fostering compliance, regulators can actively support innovation through mechanisms such as regulatory sandboxes.[56] These controlled environments allow firms to experiment with new services and business models while mitigating potential risks to consumers and the market. By providing a structured space for testing and iterative feedback, sandboxes encourage learning, refinement, and responsible innovation. This approach aligns closely with the principles of **adaptive governance**, a framework that emphasises flexibility, experimentation, and continuous improvement. While these principles have long guided regulatory thinking, recent advances in digital technologies and data analytics make adaptive governance significantly more feasible, enabling regulators to respond dynamically to emerging risks and opportunities in real time.

Regulators could further strengthen their capabilities by harnessing **big data and artificial intelligence (AI)**. Experience from the financial sector demonstrates the potential of SupTech (supervisory technology), where AI-driven tools and large-scale data analytics have transformed regulatory practices. These technologies enhance data collection, reporting, and management, providing regulators with more timely and accurate information. [57] Beyond administrative efficiency, AI and big data enable advanced analytics for market surveillance, early detection of misconduct, and prudent risk supervision.[58] By leveraging these capabilities, regulators can anticipate emerging challenges, respond proactively to market developments, and ensure more effective enforcement—ultimately creating a smarter, more agile regulatory ecosystem that keeps pace with rapidly evolving digital markets.

[56] A. Attrey, M. Lesher and C. Lomax, *The role of sandboxes in promoting flexibility and innovation in the digital age*, OECD Going Digital Toolkit Note, 2019.

[57] For an overview of the SupTech used by financial supervisors, see the database of the Cambridge SupTech Law at the Cambridge Judge Business School: https://ccaf.io/suptechlab/ as well as the Bank of International Settlement (BIS) Innovation Hub: https://www.bis.org/about/bisih/topics/suptech_regtech.htm. Next to regulators, the antitrust authorities are also exploring the use of big data and AI to improve their operations.

[58] S. di Castri, Hohl S., Kulenkampff A. and J. Prenio, The suptech generations, *Financial Stability Institute Insights* 19 (2019). More ambitiously, SupTech could be employed to simulate market evolution using agent-based computational modeling**,** providing regulators with a forward-looking tool to anticipate systemic risks and dynamic market behaviors: W. Brian Arthur, Foundations of Complexity Economics, *Nature Review: Physics* 3 (2021) 136-145.

3. Better Institutions for Competitiveness

Having outlined potential reforms to EU regulation, this section turns to a deeper challenge: even when reforms are widely recognised as beneficial for Europe's innovation and competitiveness—and have been on the agenda for decades—EU institutions, both at the EU and national levels, often struggle to deliver them. This section examines the limitations of the EU's current institutional arrangements and explores both short-term and more aspirational approaches to enhance the bloc's capacity and incentives to foster innovation. To realise the objectives highlighted in past competitiveness reports, Europe must address these institutional and governance challenges. We propose three main lines of reform to tackle current weaknesses: (1) substantially improve coordination among regulations and regulators; (2) address conflicts of interest arising from the Commission's multiple roles; and (3) strengthen key EU institutions, particularly the Court of Justice and the European Court of Auditors.

3.1. More policy and institutional coordination

3.1.1. Policy coordination

As we have observed in a companion issue paper,[59] an important barrier to growth-enhancing policies is the lack of coordination between different policies – leading to the absence of a clear overarching strategy, and the frequent inability for the EU institutions to weigh trade-offs between competing policy goals and articulate how these trade-offs have been managed. **The EU's ability to coherently manage these trade-offs and deliver growth could be improved with less dispersion of policy tools within different EU institutions, and between the EU institutions and national governments.**

For example, when it comes to industrial policy, the Commission's role has tended to focus on limiting the use of state aid, while some member-states have consistently pushed for greater flexibility on the use of subsidy. The European Competitiveness Fund is a proposal to expand the scope and discretion which the European Commission has over industrial policy funds, and which could help deliver more coherence.[60] The **Commission could amend the Competitiveness Fund proposal to allow for better safeguards and an institutional structure** which could ensure more long-term consistency, for example by making commitments to support projects and priorities over periods longer than a single Commission.

3.1.2. Institutional coordination

Next to coordination at the policy level, coordination among regulators is also essential for enforcement predictability and coherence. **While the enforcement regimes in the digital rulebook were developed largely independently from each other, there is now a pressing need to streamline them with greater regulatory coordination and cooperation to ensure consistency**.[61] Regulatory coordination is necessary on two levels: first, within the same legal instrument across member-states (for example, coordination among the 27 national telecommunications regulators), and second, across

[59] Z. Meyers, *Can EU reconcile digital sovereignty and economic competitiveness*, CERRE, 2025.
[60] https://commission.europa.eu/publications/european-competitiveness-fund_en.
[61] G. Monti and A. de Streel, *Improving institutional design to better supervise digital platforms*, CERRE Report, 2022.

different legal instruments (for example, coordination between telecommunications regulators and data protection agencies).

The first type of coordination is organised through the many EU networks of national regulators which have been established by EU law, such as the Body of European Regulators for Electronic Communications (BEREC) or the Consumer Protection Cooperation (CPC) Network. However, these networks have different institutional structures and dynamics, and may not yet ensure optimal coordination within the network.[62]

The second type of coordination is underdeveloped, both at the national and, even more so, at the EU level:

- At the national level, some networks of regulators overseeing the digital value chain have begun to emerge, for example in France, Germany, Ireland[63] or the Netherlands.[64] These networks contribute to a shared understanding of digital ecosystems and foster consistent policy approaches and decisions among different regulators; and
- At the EU level, the DMA High-Level Group, which consists of five regulatory networks (BEREC, ECN, CPC, EMBS, and EDPB), is the emerging platform for cooperation.[65] However, the functioning of this high-level group is impeded by a lack of transparency and stakeholder involvement.[66] More fundamentally, the scope of this high-level group is limited because, on the one hand, it only deals with policy issues at the general level and cannot handle specific regulatory cases and, on the other hand, it only addresses the DMA and not the other laws in the digital rulebook.

Ideally, a systemic structure should be established that, on one hand, enables and incentivises cross-country and cross-regulatory regime coordination, and on the other hand, ensures hierarchical relationships that allow for the rapid adoption of final decisions in the best interest of the EU, rather than merely serving the interests of individual member-states. **One possibility would be the establishment of a European System of Digital Regulators, with a two-tier structure**: (i) an EU tier: the creation of a new EU body, the *European Digital Agency (EDA)*; and (ii) a national tier: the *National Digital Regulators*, which could naturally evolve from the telecommunications regulators established under the EECC and the digital services coordinators set up under the DSA. A possible source of inspiration for this new system could be the Single Supervisory Mechanism (SSM), under which significant banks in the Eurozone are supervised by the European Central Bank (ECB) in close cooperation with national financial supervisors through the establishment of Joint Supervision Teams.[67]

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[62] P. Alexiadis, T. Shortall, A. Guerrero and N. Nikolinakos, Coherence vs Fragmentation - Institutional Challenges to EU Digital Market Regulation, *Business Law International* 24(3), 2023, 233-286.

[63] https://www.comreg.ie/about/other-regulators/.

[64] https://www.acm.nl/en/about-acm/cooperation/national-cooperation/digital-regulation-cooperation-platform-sdt

[65] https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupID=3904. Previously, the Digital Clearing House, an informal cooperation platforms established at the instigation of the European Data Protection Supervisors, also aims to achieve this cross country and cross regime coordination: https://www.edps.europa.eu/data-protection/our-work/subjects/big-data-digital-clearinghouse_en.

[66] A. de Streel, R. Feasey and G. Monti, DMA@1: Looking Back and Ahead, CERRE report, March 2025.

[67] Council Regulation 1024/2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions OJ [2013] L287/63. The SSM illustrates the advantages of centralisation which ensure a level playing field across the Eurozone as well as a holistic and effective regulatory assessment. It also illustrates

At the EU level, the establishment of an EU digital regulator has been proposed in the Letta Report of 2024 and was already recommended in the Bangemann Report back in 1994.[68] The optimum **scope of enforcement powers for the new EDA should be determined by weighing the costs and benefits of EU enforcement**. One option would be that the EDA would take over the direct enforcement powers currently exercised by the Commission under all the laws of the digital rulebook (such as the DMA and DSA), as well as the enforcement powers of the various regulatory networks established under the EU digital rulebook against pan-EU operators. This option could be effectively complemented by the establishment of a '28th' fully harmonised legal regime that smaller firms could choose to adopt.[69]

At the member-state level, the reformed **national digital regulators would retain important roles**. On the one hand, the heads of national regulators would participate in key aspects of decision-making carried out by the EDA. On the other hand, national regulators would monitor compliance of the EDA decisions by regulated firms in their respective member-states, handle complaints, and resolve disputes. National regulators could also keep direct enforcement powers for smaller firms.

3.2. Breaking up the European Commission

As previously noted, the role of the European Commission has evolved considerably over time, reflecting both the deepening of European integration and the growing complexity of the global political economy. Today, the Commission operates in multiple, interrelated capacities:

- *Primary initiator of EU legislation*: The Commission holds the (quasi-exclusive) power to propose legislation to both the European Parliament and the Council, shaping the EU's legislative agenda and policy priorities.
- *De facto government of the EU*: Beyond its legislative role, the Commission increasingly functions as the EU's executive authority, navigating a geopolitical landscape where strategic deals and international partnerships often take precedence over formal rules.
- *Orchestrator of industrial and innovation policy:* The Commission plays a central role in the development and implementation of the EU's emerging industrial strategy. This involves coordinating a multifaceted policy ecosystem, including legal frameworks, technical standards, funding instruments, and engagement with both public actors—particularly member states—and private sector stakeholders.
- *Enforcer of single market rules:* Through its enforcement powers, the Commission ensures the integrity of the internal market and can initiate infringement proceedings against member states that fail to comply with EU law, safeguarding the uniform application of EU regulation.

the many challenges of centralisation. As the system is still in transition, national differences remain in supervision culture that should be eroded as joint supervisory teams continue to work together. Moreover, sufficient transparency of SSM operation should be ensured to preserve the accountability of the system of supervision.

[68] Bangemann group, Recommendations of the high-level group on the information society to the Corfu European Council, p.17.

[69] This 28th regime will be proposed by the Commission for start-ups to simplify applicable rules and reduce the cost of failure, including any relevant aspects of corporate law, insolvency, labour and tax law: Communication from the Commission of 29 January 2025, A Competitiveness Compass for the EU, COM(2025)30.

- *Regulator:* The Commission is assuming an increasingly prominent regulatory role, particularly in the digital economy and in supervising large technology firms, overseeing the implementation of key legislation such as the Digital Markets Act (DMA) and selected provisions of the Digital Services Act (DSA) and AI Act.
- *Evaluator and reformer of EU policy:* The Commission monitors and assesses the effects of EU legislation, regularly reporting findings to the European Parliament and the Council. Based on these evaluations, it may propose reforms to improve the effectiveness, efficiency, and responsiveness of EU policies.

Taken together, these roles position the Commission not only as a central actor in EU governance but also as a dynamic institution that bridges legislative initiative, regulatory oversight, industrial strategy, and strategic policymaking in an increasingly complex global context.

However, each of these roles demands a distinct set of capabilities, and the Commission's expanding portfolio of responsibilities requires it to cultivate and integrate all these competencies internally. To perform effectively, the Commission should **enhance its strategic planning and foresight capacities**, ensuring it can anticipate emerging policy challenges and respond proactively rather than reactively.[70]

Equally important is the **re-internalisation of critical technical expertise**. While external consultants can provide valuable support, overreliance on them carries risks: consultants are often selected on a repeated basis which affect their independence and they may excel in project delivery rather than in providing the deep, context-specific policy insights necessary for informed decision-making. By building robust in-house expertise, the Commission can strengthen its capacity for independent analysis, improve the quality of its policy advice, and safeguard the coherence and effectiveness of EU governance. In response to the rapid evolution of digital technologies, the Commission should in particular enhance its expertise by recruiting additional engineers and data scientists.

The expansion of the Commission's roles has also generated internal tensions—and, in certain cases, potential conflicts of interest—between its diverse functions. While such tensions are not entirely new, they have been magnified by the growing complexity of the Commission's mandate and the increasingly interconnected and competitive global environment.

The first key tension arises **between the Commission's role as the initiator of EU legislation (and sometimes enforcing them) and its function as the enforcer of single market rules against member states**. As noted already, when the Commission proposes legislation requiring Council approval, it may be hesitant to initiate infringement proceedings that could alienate member states whose support is essential for the passage of new laws. This dynamic can create a structural disincentive to rigorously enforce single market rules, potentially undermining the uniform application of EU law and weakening the Commission's credibility as an impartial regulator.

A second tension emerges between the **Commission's role in proposing legislation and its role in evaluating the effectiveness of existing laws**. In effect, the Commission is often tasked with assessing its own work, which may create an inherent reluctance to acknowledge or emphasise policy shortcomings. For instance, in its evaluations of the General Data Protection Regulation (GDPR) published in 2020 and 2024, the Commission tended to downplay some of the regulation's adverse

[70] Ref Forseight Report.

effects on innovation, particularly for small and medium-sized technology firms. [71] These challenges have been well documented in the academic literature and highlighted in the Draghi Report, yet they received limited attention in the Commission's official assessments. This self-evaluative dynamic raises questions about the objectivity of the Commission's monitoring processes and underscores the need for independent oversight mechanisms to ensure a balanced and evidence-based appraisal of EU legislation.

A third tension arises between the Commission's role as a **geopolitical actor and its function as a regulator**. Academic literature consistently highlights that regulatory predictability and effectiveness is maximised when regulators are independent—not only from the firms they oversee but also from political influence.[72] While EU law mandates and safeguards this dual independence for national regulatory authorities,[73] it does not provide the same protections when the European Commission performs regulatory functions. According to the EU Treaties, the Commission is independent from national governments, but not from the European Parliament. [74] This raises long-standing concerns about its impartiality in regulatory matters. The historical debate over the independence of DG Competition and proposals to establish a separate EU antitrust agency may resurface with renewed urgency,[75] particularly as the Commission assumes greater responsibility for enforcing the digital rulebook while simultaneously becoming more geopolitically active. In recent years, the explicit integration of industrial policy objectives across a broad array of policy areas has arguably reinforced the perception that the Commission may prioritise strategic or geopolitical considerations over regulatory effectiveness. This growing overlap between political ambition and regulatory authority risks undermining confidence in the Commission's neutrality when it acts as a rule enforcer. Furthermore, it may encourage foreign powers to seek to 'negotiate' with the EU about how the Union applies its digital rulebook, by encouraging a perception that implementation and enforcement are politicised functions.

To mitigate these tensions—which in some cases amount to genuine conflicts of interest—the Commission's various roles could be more clearly delineated. One approach would be to introduce greater internal separation by establishing independent teams within the Commission, each dedicated to a specific function. A more transformative option would involve structurally reorganising the Commission itself, dividing it into distinct entities aligned with its core functions: a geopolitical executive (government), a regulatory authority, and an internal market agency responsible for ensuring member-state compliance with single market rules. Such functional or structural separation could strengthen regulatory independence, enhance accountability, and reduce the risk that political considerations unduly influence enforcement or policy decisions—particularly as the Commission's mandate expands into increasingly complex and politically sensitive domains. At the same time, this approach carries potential costs: reorganisation could be time-consuming and may lead to a

[71] M. Bassini, M. Maggiolino and A. de Streel, *Better Regulation and Evaluation for the EU Digital Rulebook*, CERRE Report, January 2025.

[72] Baldwin R., Cave M., and M. Lodge (2012), *Understanding Regulation: Theory, Strategy, and Practice*, 2nd ed., Oxford University Press; C. Decker, *Modern Economic Regulation: An Introduction to Theory and Practice*, 2nd ed (Cambridge University Press, 2023).

[73] See, eg, European Electronic Communications Code, Directive (EU) 2018/1972, art 8.

[74] Article 17 TEU. Incidentally, the previous Justice Commissioner Reynders has acknowledged the potential for a lack of independence of the Commission when he noted that: *"… based on Article 8 of the Charter, the enforcer of data protection rules must be ensured by an independent authority. Therefore, the Commission could not have enforcing powers as it has in the DMA as DSA":* Speech on "The Future of Data Protection: Effective enforcement in the Digital World", 16 June 2022.

[75] C-D. Ehlermann, 'Reflections on a European Cartel Office', *Common Market Law Review* 32(2), 1995, 471-486.

temporary or even permanent loss of synergies between different policy instruments, potentially diminishing the Commission's overall policy coherence and agility.

3.3. Strengthening EU Courts

Finally, to enhance regulatory design and implementation at both the national and EU levels, the role of independent EU oversight bodies should be significantly strengthened.

First, the Court of Justice of the European Union (CJEU) must handle interpretative questions from national courts more efficiently to ensure the timely, uniform, and coherent application of EU law across member states. Inconsistent interpretations can undermine the single market, create legal uncertainty, and reduce the credibility of EU governance. The recent reform allowing some preliminary ruling questions to be answered by the General Court represents a positive step,[76] but it may prove insufficient over the medium to long term, particularly as the EU's regulatory reach and legislative output continue to expand. One potential solution would be the **establishment of regional EU courts, modelled on federal district courts, to manage caseloads more effectively, accelerate decision-making, and provide more localised expertise on complex regulatory matters**.[77] Such a structure could also reduce bottlenecks in highly technical areas, such as competition law, digital regulation, where timely decisions are critical to both compliance and enforcement.

Second, the **European Court of Auditors (ECA) could play a more prominent role in assessing the effectiveness of EU laws and policies**. As an independent EU institution,[78] the ECA is arguably better positioned than the Commission to conduct objective, credible evaluations—particularly in light of the structural tensions that arise when the Commission evaluates legislation it has itself proposed. Empowering the ECA to conduct more regular, systematic assessments of legislative and regulatory outcomes would provide a stronger evidence base for policy reform, identify unintended consequences, and support more transparent and accountable decision-making.[79] In addition, the ECA could collaborate with other independent research institutions, national audit offices, and academic bodies to enhance the analytical rigor of its evaluations, ensuring that reforms are grounded in empirical evidence rather than political expediency.

Strengthening these independent oversight mechanisms would not only improve the quality and credibility of EU law and policy but also reinforce public trust in EU institutions. By ensuring that enforcement, evaluation, and interpretation are conducted impartially and efficiently, the EU can

[76] Regulation 2024/2019 of the European Parliament and of the Council of 11 April 2024 amending Protocol No 3 on the Statute of the Court of Justice of the European Union.

[77] A similar but more ambitious proposal has been made by L. Garicano, B. Holmström and N. Petit in their Constitution for Innovation. They recommend the creation of Specialised Commercial Courts with exclusive jurisdiction over internal market violations by Member States. Any business facing discriminatory or non-discriminatory trade barriers could bring proceedings directly under English-language procedures. Decisions would be handed down within 180 days. The Specialised Commercial Courts would issue European Union-wide injunctions, award damages for lost profits, and their rulings would bind all Member States: https://www.siliconcontinent.com/p/the-constitution-of-innovation.

[78] TFEU art 285.

[79] The ECA already carries sometimes out performance audits for specific EU policies besides its main role of auditing EU finances: European Court of Auditors Methodological Guide 2023, pp. 18-24. For instance, the Court recently adopted an interesting (and critical) report on the EU Artificial intelligence ambition: https://www.eca.europa.eu/en/publications/SR-2024-08.

better manage its complex regulatory environment, anticipate challenges, and respond proactively to emerging policy needs.

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