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A MORE COHERENT EU DIGITAL RULEBOOK: SUBSTANTIVE AND INSTITUTIONAL ISSUES

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1. Introduction

CERRE Regulatory Labs serve as forums to explore key medium-term regulatory and policy challenges related to the digital economy and society.

This **CERRE Regulatory Lab explored how to enhance consistency between different policy objectives in digital regulation**. During the previous European legislature (2019–2024), a set of laws was adopted to regulate the European digital ecosystem, each with different policy priorities such as promoting competition, consumer protection, cybersecurity and data protection.[1] Many digital laws were also passed at national level.

It is inevitable that such a set of laws will involve policy objectives which are sometimes in tension. Policy-makers may want greater competition, while also wanting consumer protection rules that raise barriers to market entry. They may want to give users more choices while also protecting them from the security implications of making bad decisions. And they may want a thriving data economy while also treating data protection as a fundamental right.

While the existence of policy tensions is inevitable, the problem is that they are not always addressed clearly, and in an evidence-based way, at the legislative stage. This has often meant the European Commission and regulatory agencies have had to attempt to manage necessary trade-offs between different policy goals at the implementation and enforcement stages. The existing framework for regulatory institutions also does not always ensure good coordination between agencies when trying to manage these policy trade-offs. In turn, this leads to inconsistencies and lack of regulatory predictability, excessive complexity, and less willingness by firms to confidently deploy innovations.

- The current European Commission (2024–2029) has committed to streamlining the EU's digital rulebook and is currently undertaking a 'digital fitness check' focused on addressing the interplay between different rules. This provides an opportunity to consider **how regulatory coherence and consistency can best be addressed at the legislative and then at the enforcement and implementation stage** – including through: **refining the law-making process** so that law-makers can identify and grapple with inconsistencies and tensions in a transparent way (or at least acknowledge them) – and, even more importantly, avoid them occurring in the first place where this is possible. This note explores the role that political incentives play in discouraging the law-making institutions from acknowledging and balancing competing policy priorities up-front;
- **improving the ability and incentives for** regulatory agencies to cooperate among themselves; and
- **encouraging better practices by regulators**. According to its Digital Fitness Check, for example, the European Commission will analyse: *'good practices and challenges in the interplay between the different governance systems for implementing and supervising the*

[1] https://www.ceps.eu/ceps-publications/a-dataset-of-eu-legal-and-policy-instruments-for-the-digital-world/.

rules, including cooperation and consultation mechanisms between authorities and EU-level cooperation through boards and other fora'.[2]

[2] https://digital-strategy.ec.europa.eu/en/policies/digital-rulebook.

2. Problem definition

2.1. At the substantive level

The various laws in the EU's digital rulebook were developed largely independently. Each piece of legislation typically pursued one policy goal, or a small number of policy objectives. These policy objectives often overlap and may sometimes be in tension. This type of problem can arise in three ways:

- Overlapping requirements which **cannot be complied with at the same time**. True conflicts of this sort tend to be rare, because they are largely addressed in the legislative process. However, where they exist, these inconsistencies create the most serious problems for legal and investment certainty.
- Overlapping requirements where there is no legal inconsistency, but the **policy objectives are in tension, and it is not clear how regulated firms or regulators should balance the two objectives**. Unresolved tensions may result, for example, in uncertainty for firms about where the right trade-off between two objectives might be; and the risk of facing multiple investigations into similar facts by different regulators, potentially with different outcomes.[3]
- Overlapping requirements where the **policy objective points in the same direction but one is more prescriptive or onerous than the other**. For example, the DSA has trader traceability requirements which are more prescriptive than previous regimes and supplement many sectoral rules.[4] This is not a problem from the perspective of legal certainty or unpredictability, as the most onerous obligation prevails. However, it nevertheless results in legal complexity, which has a cost because it makes it more difficult for firms to understand their obligations, and it can undermine the EU's single market if it results in the same firm needing to adapt to different legal standards in different EU Member States. An example of this latter problem is the overlap of the DMA and Article 19a of the Act against Restraints of Competition in Germany, which may both provide overlapping rules for the same business practices, and the various national laws governing providers of online platforms or online content which overlap with the DSA. Furthermore, it can result in duplicative requirements and reporting obligations, raising compliance costs unnecessarily.

Given they are both common and cause significant uncertainty, this framing note primarily focuses on the second category of issues, examples of which are set out in Box 1 below.

[3] Case C-117/20 *bpost*, EU:C:2022:202, para.51. See also https://www.edps.europa.eu/system/files/2025-01/towards_a_digital_clearinghouse_2_0_january_2025_en_0.pdf.
[4] Eg, the Batteries Regulation, Short Term Rental Regulation, and the General Product Safety Regulation.

Box 1. Examples of policy tensions between different digital laws

DMA/CRA: the EU's Digital Markets Act demands more openness from digital platforms, however when implemented without sufficient safeguards, openness can pose privacy and security risks. This, in turn, may be contrary to the objectives of laws like the Cyber Resilience Act, which requires that operating system providers must ensure a minimum level of product security to manage risks across their platforms. The DMA provides various exemptions from openness to protect privacy and security, but it does not explain in detail how the exemptions work. For example, is any negative impact on privacy or security a 'trump card' which negates the DMA rules? Or if a DMA rule has a significant positive impact on contestability but a minor negative impact on privacy, does the DMA still prevail?[5]

GDPR/DMA: the EU regulatory framework embraces two views about personal data that appear to clash. Generally, the GDPR safeguards users' fundamental rights to data. On the other hand, some EU legislation seeks to promote the economic value of that data, for example the data portability rules in the DMA.[6] It is unclear whether the EU law-makers have struck a clear balance between fundamental rights protection and ensuring the ability of firms to use data to innovate and stimulate competition.

DSA/DMA: the DSA aims to increase levels of online safety, for example by ensuring that certain types of online platforms (which could include app stores) can trace the identity of those who trade on their platforms. The DMA, on the other hand, enables the distribution of apps by new app stores and directly on the open internet. Additional choices and options can be beneficial for consumers. However, the DMA and DSA also need to be implemented in a coordinated manner to ensure greater competition leads to higher levels of consumer protection, rather than facilitating the entry of players who undermine consumer trust.

If the EU digital rulebook itself does not resolve tensions clearly and transparently, then the result is a regulatory environment which is (at best) unduly complex and (at worst) subject to legal uncertainty and lack of regulatory predictability. In turn, this can impact innovation – since firms are likely to shun ideas or technologies if their adoption would not be unambiguously lawful, or if the regulatory standards such ideas or technologies must adhere to are unclear. Lack of certainty can also impact European competitiveness and sovereignty, since large global firms (which in the digital sector tend not to be European) are likely to have the resources to more easily navigate a complex regulatory environment, and understand how different authorities might respond to the same conduct, than smaller firms. Furthermore, in some cases policy objectives which are in unresolved tension can be 'weaponised' by regulated actors – for example, those actors might strategically rely on and emphasise one policy objective in order to undermine a different policy objective. Hence, those uncertainties may also undermine regulatory effectiveness.

Addressing all potential policy tensions is likely to be a complex and difficult exercise. For instance, the proposed EDPB-Commission guidelines on the interaction of the DMA and GDPR are a step in the right direction, but they are a long document which still leaves a number of unanswered questions about how the DMA and GDPR relate to each other.[7] This provides an illustration of the complexity – and these are just two of the nearly 90 laws which regulate the digital sector.[8] The European

[5] Z. Meyers, *Balancing Security and Contestability in the DMA: The case of app stores*, European Competition Journal, 20(3), 2024.
[6] G. Monti and A. de Streel, 'Interplay between the DMA and other Regulations', CERRE, March 2025, p 15.
[7] https://www.edpb.europa.eu/our-work-tools/documents/public-consultations/2025/joint-guidelines-interplay-between-digital_en
[8] https://www.ceps.eu/to-connect-the-dots-how-about-an-eu-digital-clearinghouse-to-coordinate-across-eu-digital-law/.

Commission recently conducted a review recognising that the Digital Services Act interacts with 54 other EU laws, for example.[9]

2.2. At the institutional level

In addition to substantive tensions between policy objectives, the multiplication of laws in the digital rulebook also led to a **multiplication of enforcement regimes and regulatory agencies which were developed largely independently**.[10] This has led to a complex and fragmented institutional framework. Some regulators are not fully independent, which undermines legal predictability and coherence. The complexity of the framework means that potential synergies between different agencies are often unrealised, and regulatory tensions between them are persistent. In turn, this reduces the effectiveness of the rulebook.

2.2.1 Proliferation of regulators and lack of cooperation

The EU digital rulebook has substantially increased the number of regulators to more than 270 authorities dealing with the digital sector at the national and EU level.[11] **This risks creating excessive complexity, undermining legal predictability and regulatory coherence. It may also lead to double jeopardy if there is insufficient coordination** among the authorities.[12]

Better coordination can take place on two levels: first, within the same legal domain across Member States (for example, coordination among the 27 national telecommunications regulators or 27 competition authorities) and Member States' laws, across different legal domains (for example, coordination between telecommunications regulators and data protection agencies).

The ***first type of coordination (within the same legal domain)*** **is organised through the many EU networks/boards of national regulators which have been established by EU law**. Even regulators

[9] https://digital-strategy.ec.europa.eu/en/library/report-application-article-33-regulation-eu-20222065-dsa-and-interaction-regulation-other-legal.
[10] 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.
[11] M. Draghi, The future of European competitiveness; Part B: In-depth analysis and recommendations, Report to the Commission, Part A, 2024, p.26
[12] Case C-117/20 *bpost*, EU:C:2022:202, para.51.

with very different perspectives can benefit from frank dialogue, exchanging views openly, which can reveal synergies and highlight where coordination is needed. Those include the European Competition Network (ECN), the Consumer Protection Cooperation (CPC) network, the European Data Protection Board (EDPB), the Body of European Regulators for Electronic Communications (BEREC), the European Board for Media Services (EBMS) or the European Board for Digital Services (EBDS). Beyond multilateral fora, bilateral and ad hoc coordination mechanisms — such as joint guidelines between the European Commission and the EDPB — have proven valuable in clarifying regulatory interplay and could be expanded.

Those networks/boards have been established at different times, and they have different institutional structures and dynamics; some of them may not yet ensure optimal coordination within their members. One particular problem is that different Member States can tend to parcel out responsibilities to different regulators in different ways (often based on national traditions or institutional quirks), so that regulators in different Member States end up with different mandates, making EU-wide coordination more difficult.

The ***second type of coordination (across legal domains)*** **is still in its infancy**, even though it has been encouraged by the Court of Justice in the *Meta* case as an application of the principle of sincere cooperation in the EU treaties (Art.4.3 TEU).[13] Cross-domain coordination – both at EU and national level – is sometimes challenging because the agencies often come from different epistemologies and institutional cultures, making alignment slower for coherent EU digital governance.

At the ***national level*****, some networks of regulators overseeing the digital value chain from different legal domains have begun to emerge**, for example in France, Germany, Ireland[14] or the Netherlands,[15] inspired in part by the UK's Digital Regulation Cooperation Forum. The EU-based networks are still in their infancy, but they may contribute to a shared understanding of digital ecosystems and can foster more consistent policy approaches and decisions among different regulators.

At the ***EU level*****, the DMA High-Level Group, which consists of five regulatory networks (ECN, CPC, EDPB, BEREC and EBMS), is an emerging platform for cooperation**.[16] The High Level Group provides advice and expertise to the European Commission when enforcing the DMA as well as to identify and assess the regulatory interplay between the DMA and the other laws in the EU digital rulebook. However, the functioning of this high-level group is still in its infancy and is impeded by a lack of transparency and stakeholder involvement.[17] More fundamentally, the scope of this high-level group is limited because, on the one hand, it only addresses the DMA and not the other laws in the EU digital rulebook and, on the other hand, it only deals with policy issues at the general level and cannot handle specific regulatory cases. The effectiveness of the High-Level Group is further constrained by structural asymmetries, as participating authorities engage on an unequal footing and agenda-setting powers remain concentrated in the European Commission. Also, the authorities in charge of cybersecurity,

[13] Case C-252/21, *Meta Platforms*, EU:C:2023:537, para.52.
[14] https://www.comreg.ie/about/other-regulators/.
[15] https://www.acm.nl/en/about-acm/cooperation/national-cooperation/digital-regulation-cooperation-platform-sdt
[16] DMA, Art.40. https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupID=3904. So far, the high-level group has established three thematic subgroups focused on data-related obligations, Article 7 DMA (interoperability), and artificial intelligence ('AI'): Commission DMA Report, COM(2025) 116, paras 68 et sq.
[17] R. Feasey, G. Monti and A. de Streel, DMA@1: Looking Back and Ahead, CERRE report, March 2025.

which is an increasingly important dimension of the digital regulation, are not part of the High-level group.

These forums do not only need to ensure co-operation between, but in some cases also within, different agencies and institutions. The European Commission plays an important role in enforcing part of the EU digital rulebook (in particular the DMA, the DSA and the AIA) against the biggest digital platforms active in Europe. For an effective and coherent enforcement, this **requires an excellent coordination within the different European Commission services in charge**, in particular DG CONNECT, DG COMP, DG JUST, the Joint Research Centre and the Legal Service.

Ideally, a systemic structure should be established that, on the 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 interests of the EU as a whole, rather than merely serving the interests of individual Member States or which privilege the policy objectives pursued by the most powerful or influential agencies.

Ideally, cooperation and dialogue should have concrete outcomes which are transparent and contribute to regulatory predictability. For example, the European Commission and certain regulatory networks/boards are starting to adopt **common guidelines** on the interplay between different EU laws.[18] Those guidelines provide legal certainty for the regulated digital platforms on the interplay, the complementarity and the possible tensions between different pieces of the digital rulebook. Importantly, they provide an opportunity for regulators to engage in consultation and evidence-gathering, and to make 'calls', in an environment which is less antagonistic than a dispute-driven enforcement setting where stakeholders have less incentive to make concessions and time constraints can make it difficult to gather all perspectives.

2.2.2. Lack of regulatory independence

The important regulatory role of the European Commission raises another issue. Academic literature consistently highlights that **regulatory predictability, and effectiveness are maximised when regulators are independent—not only from the firms they oversee but also from political influence**.[19] While EU law often mandates and safeguards this dual independence for national regulatory authorities,[20] it does not provide the same protection when the European Commission performs regulatory functions.

According to the EU Treaties, the European Commission should be independent from national governments, but not from the European Parliament before which the European Commission is politically accountable.[21] The European Commission's independence from national governments is increasingly doubtful: as the European Commission has become a more assertive and geopolitical actor, it has necessarily had to engage in more 'horse trading' with national capitals, making it more difficult for the European Commission to assert positions which are in tension with those of the

[18] EC-EDPB Joint draft Guidelines of October 2025 on the interplay between the DMA and the GDPR.
[19] R. Baldwin, Cave M., and M. Lodge, *Understanding Regulation: Theory, Strategy, and Practice*, 2nd ed., Oxford University Press, 2021; C. Decker, *Modern Economic Regulation: An Introduction to Theory and Practice*, 2nd ed, Cambridge University Press, 2023.
[20] See, e.g., European Electronic Communications Code, Directive 2018/1972, art 8.
[21] 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 and DSA":* Speech on "The Future of Data Protection: Effective enforcement in the Digital World", 16 June 2022.

governments of powerful Member States. The European Commission's lack of independence from Parliament 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 are now resurfacing with renewed urgency.[22] In recent years, the explicit integration of industrial policy objectives across a broad array of policy areas has arguably reinforced the perception that the European Commission may prioritise strategic or geopolitical considerations over regulatory effectiveness.

This **growing overlap between political ambition and regulatory authority risks undermining confidence in the European 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.[23] Independence, however, cannot be assessed in isolation from accountability. The often-invoked distinction between policy-making and implementation is overstated, however, as regulatory enforcement inevitably entails policy choices. While regulators must be shielded from political interference in individual cases, a clear and legitimate political channel is needed to communicate strategic priorities and evolving policy objectives and to ensure accountability. Without such a channel, independence risks being perceived as isolation, rather than as a condition for effective and legitimate regulation.

[22] C-D. Ehlermann, 'Reflections on a European Cartel Office', *Common Market Law Review* 32(2), 1995, 471-486.
[23] M. Mariniello, It is time for an independent European Digital Authority, Bruegel, September 2025.

3. Policy options at the substantive level

At the legislative level, two challenges need to be addressed: how to address *existing* unresolved policy tensions, and how to *avoid future tensions*.

3.1 Ex post interventions

The first problem is what types of 'ex post' interventions could best address unresolved tensions which already exist between laws. This may necessitate a legislative effort to streamline the objectives and provisions of the digital rulebook.

Options here include (i) a **targeted mechanism by which some of the most problematic tensions could be better addressed; or (ii) a broader EU streamlining campaign**. These are broadly reflected in the European Commission's digital Omnibus (which aims at targeted improvements) and its digital fitness check (which offers a way to assess more comprehensively how the digital acquis operates as a whole, with a particular focus on gaps, overlaps, and inconsistencies).

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The digital Omnibus packages have a number of tightly defined changes to EU law. Despite this, a number of the changes introduce new ambiguities and legal questions. Furthermore, the co-legislators want to apply significant scrutiny to the digital Omnibus proposals – in particular, many MEPs have voiced concern that the proposal might water down EU standards. This suggests that the European Commission will act very carefully in its broader streamlining exercise through the Digital Fitness Check. As CERRE has noted previously, any such broad simplification exercise must be conducted in an evidence-based way: which will **require a more explicit and rigorous analysis of the trade-offs** between overlapping legal regimes, their objectives and the interests they protect.[24]

However, a broader question is whether the EU policy-making cycle can better incorporate ongoing and systemic reviews and improvements. The 2016 Inter-Institutional Agreement on Better Law Making requires the EU's law-making bodies to consider including monitoring and evaluation clauses in all new laws. EU laws typically do contain a 'review' clause, requiring the European Commission to conduct a 'regulatory evaluation' to determine how a law has performed after a certain period after it comes into force.

However, these have failed to prevent the type of problems which now necessitate the Omnibus and Digital Fitness Check initiatives. There **are three reasons for this**. One is that both regulatory evaluations and fitness checks are undertaken by the European Commission, often with the help of consultants which are not fully independent from the European Commission, and the European Commission (since it will usually have proposed the law in question) may have strong institutional incentives to overstate how well a law has performed and to underplay its costs and weaknesses. A second is that fitness checks are only conducted on an *ad hoc* basis, unlike reviews of specific laws. A

[24] M. Bassini, M. Maggiolino and A. de Streel, 'Better Law-Making and Evaluation for the EU Digital Rulebook', CERRE, 22 January 2025.

third is that these reviews typically examine a law in isolation rather than considering how regulation in an entire sector or area is performing.

It may be appropriate to address these problems by **tasking a body like the European Court of Auditors (which currently performs ad hoc reviews of the European Commission work and strategies)[25] or a revamped and strengthened Regulatory Scrutiny Board (which reviews some of the European Commission's regulatory evaluations) to conduct regular, scheduled and independent overarching reviews into the digital rulebook**.[26] The regular reviews could provide an overarching assessment of how well laws are working together, along with reviewing the effectiveness and proportionality of the various digital laws more generally.

3.2 Ex ante reforms

A second – and more important – challenge is how law-makers could address policy tensions in the first place. This would require **policy tensions to be better acknowledged and addressed up-front in the legislative process**, which is far better than identifying and trying to resolve them afterwards (for example through fitness checks and evaluations). This involves three steps: (i) improving the law-making process so policy tensions can be better identified; (ii) improving the political incentives so as to identify and address policy tensions up-front; and (iii) designing legislation in a way which minimises policy tensions or at least provides a more transparent and structured way of ensuring they are addressed.

3.2.1 Identifying policy tensions

The law-making process may often underplay or simply fail to recognise potential tensions between policy objectives. **Impact assessments are the most appropriate mechanism by which to assess how a legislative proposal contributes to – or has the potential to constrain – the overall policy coherence of the EU digital acquis**.[27] However, there are limitations that need to be addressed before these can provide a more meaningful way to identify policy tensions:

- First, impact assessments are not always as robust and comprehensive as they ought to be, and there are perceptions that they do not always properly assess alternative proposals which might better contribute to policy coherence. For example, the Regulatory Scrutiny Board has in recent years rejected about a third of the European Commission's impact assessments in the first instance, and even when providing a positive opinion often has significant reservations.28 In particular, impact assessments often poorly identify and analyse the effects of legislative proposals. As an illustration, the European Commission could better analyse the existing regulatory environment, and parallel regulatory interventions which are being proposed, in order to identify areas where policy objectives are in tension. The failure to do so can lead to a bias towards more regulatory intervention and can contribute to lack of policy coherence.

[25] TFEU, Art.287(4). The ECA already carries 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/.
[26] A. Bucher and E. Golberg, Better regulation in the European Union needs a fresh start, *Bruegel Policy Brief* 01/2026.
[27] Commission Better Regulation Guidelines, SWD(2021)305.
[28] Z. Meyers, 'Better regulation in Europe: An action plan for the next Commission', CER, 19 March 2024.

- Second, as is well documented, the Council and MEPs do not themselves appear to impose much scrutiny on the European Commission's impact assessments. Moreover, they increasingly propose significant amendments to European Commission proposals without updating the European Commission's impact assessment or preparing a new impact assessment. This can lead to 'political compromises' which introduce unidentified policy tensions very late in the legislative process. As recommended by Draghi, a 'dynamic impact assessment' – or at least an updated assessment just before a proposal is finally adopted in the trilogues – should be prepared so that law-makers can better understand how a proposal fits coherently into the digital acquis. Furthermore, ideas which were initially considered by the European Commission in one proposal but were discarded because an impact assessment found they did not deliver value often find their way back in new proposals: some ideas the European Commission discarded when designing the DSA have now found their way into the Digital Fairness Act proposal, for example. This illustrates that political pressure can often give suboptimal policy ideas a sense of inevitability.

3.2.2 Addressing political incentives

EU law-makers face strong incentives to pass laws: since the **EU is primarily a regulatory superpower**,[29] this is political leaders' main metric of success. This means that there can be compelling political incentives to ensure laws are passed. Even when a policy tension has been identified, therefore, there can sometimes be a desire to 'brush over' them, or delegate them to be managed later in secondary legislation or implementation/enforcement practices.

When policy tension occurs between Member States' laws (or legislative proposals) and the EU law, this often results in the co-legislators agreeing to give Member States the right to **'gold-plate' legislation** when it is implemented domestically, to opt-out of certain rules, or to diverge in their application of aspects of EU law.[30] The way in which subsequent EU and national rules relate to each other is rarely addressed. The European Commission has been addressing this in part by relying increasingly on passing Regulations rather than Directives to maximise harmonisation.

When policy tension is identified between different EU laws, law-makers may try to address the risk of policy incoherence. Some laws clearly state a 'hierarchy', such that one obligation will override another in cases of conflict.[31] However, the law rarely specifies what constitutes such a conflict. In other cases, law-makers will include '**without prejudice' clauses**[32] – or will not address the question of overlap or tension at all. The Court of Justice makes clear that when two laws of equal status both apply, they must be applied in a manner which is compatible and consistent with the other.[33] However, this general principle cannot always be applied straightforwardly or unambiguously, since whether laws are fully compatible and consistent with each other – and whether there is a means to comply with both (and at what cost) – may be a question of debate. There may also be multiple different ways to reconcile two obligations which appear to be in tension. Yet these nuances are rarely expressly addressed by law-makers.

[29] Giandomenico Majone, 'The rise of the regulatory state in Europe', West European Politics 17(3), 1994.
[30] This approach of national gold plating has been very much criticised by the Draghi Report.
[31] For example, Data Governance Act article 1(3) and Data Act article 1(5).
[32] For example, Digital Markets Act recital 11 (DMA and competition law) and recital 12 (GDPR).
[33] Judgment of the General Court of 3 May 2018 in Case T-653/16, Malta v Commission, ECLI:EU:T:2018:241, paragraph 137.

Traditionally, the European Commission has been at the vanguard of applying better regulation principles (at least on paper).[34] However, as it has become a more powerful and politicised entity, its willingness to continue insisting on these principles during the legislative process has waned. In future – especially as the costs of unresolved policy tensions and regulatory uncertainty have become more clearly and loudly articulated – **the European Commission may need to take a tougher stance in its negotiations with the co-legislators to ensure policy coherence (where policy incoherence emanates from MEPs or the Member States) and better apply its own better regulation principles (to help avoid situations where the European Commission itself is the cause of policy incoherence)**. This could include, ultimately, being more willing to withdraw its proposals if Member States or MEPs demand changes which introduce unresolved policy tensions. Better regulation procedures should never be used to usurp democratic decision-making: but they can help structure law-makers' thinking and decision-making. If law-makers are asking the right questions, and have all the evidence in front of them, they are more likely to make good decisions.

A broader question is how to change the political incentives of law-makers. Currently, 'passing a law' is one of the only metrics by which MEPs can show they have delivered for voters in the short term, for example – even if that legislation has negative impacts for innovation over the long term. Other metrics than legislative activities could be developed to assess the work of the MEPs, for instance through the establishment of an **innovation index or innovation prize to be awarded to the MEPs** who have contributed the most to EU innovation. Such a prize could be determined by a panel of independent experts, such as from academia. The criteria for allocating the prize should recognise that regulation is not inherently 'anti-innovation': rather, regulation can promote invention by delivering a single European market, addressing market failures, and promoting trust to increase take-up of new technologies. It could, for example, assess which MEPs have contributed the most to ensuring new laws meet the standards of better regulation – such as by ensuring laws are proportionate and risk-based so that firms have freedom to experiment while acting responsibly – and which MEPs have consistently factored impacts on innovation into their approach to law-making.

For Member States' laws, the EU should have better mechanisms to identify the **best national policies which stimulate competitiveness and regulatory effectiveness** and then scale them up throughout the European Union.

3.2.3 Legislative design

Finally, the European Commission should consider how aspects of legislative design can reduce the risk of policy incoherence in the digital space.

One means of addressing policy tension is through a more rigorous focus on principles-based and outcomes-focused digital regulation. This type of regulation is typically less prescriptive and generally based on standards rather than rules: for example, the DSA requires very large online platforms to conduct risk assessments and mitigate the risks of their platforms, without specifying precisely which risk mitigation techniques must be adopted.[35] By providing firms with more flexibility, such regulation can better accommodate the existence of different policy objectives than 'traditional' regulation.

[34] European Commission, 'Better regulation guidelines', November 2021.
[35] DSA art 34.

However, principles-based regulation leaves open the question of how to achieve the 'right balance' between two objectives, which can lead to regulatory uncertainty, particularly if it requires voluminous guidance and complex guidance from regulators – which could be subject to change more frequently than legislation.

One way to address this problem would be by setting up **inclusive governance mechanisms to help identify ways to mitigate unresolved policy tension**. These could include, for example, encouraging the development of industry standards, or allowing independent and appropriately qualified third parties to be involved in decisions about how regulated companies should balance competing policy objectives.[36] Options like industry standards and regulatory guidelines can preserve flexibility if they serve as 'safe harbours' (i.e. giving firms certainty that if they follow a standard they will be considered compliant) while giving firms freedom to take other approaches if they can demonstrate these will also deliver the regulatory objectives. It will also be important to ensure laws are designed so that **regulators and enforcement bodies do not (and cannot) think in silos**, an issue we turn to in the following section**.**

It is worth noting that while principles-based regulation can give firms more flexibility, it also demands that they act with more responsibility. Principles-based regulation defies a 'check-box' approach to regulatory compliance, requiring instead that firms engage in a continuous exploration of the impacts of their business model and an ongoing dialogue with regulators. This can be constraining for technology firms which have been accustomed to a 'move fast and break things' approach – but more appropriate now that technological and business decisions made by these firms can have enormous risks for the economy and society.

Aiming for consistency of terminology and definitions is also important,[37] avoiding the risk of closely but not perfectly overlapping scope. '**Codification' of closely related laws** into a single instrument (as occurred with the European Electronic Communications Code, for example, and could occur with the EU's various data laws) might provide a good opportunity to identify and resolve unnecessary overlaps and tensions.

[36] G. Monti and A. de Streel, 'Interplay between the DMA and other Regulations', CERRE, March 2025, p 24.
[37] https://www.edps.europa.eu/data-protection/our-work/publications/opinions/digital-markets-act_en.

4. Policy options at the institutional level

To deal with the lack of regulatory coordination and the lack of independence of the European Commission, several options are possible, some more radical than others.

4.1. Strengthening regulatory cooperation

A moderate policy option would be to increase the ability and the incentives for regulators to cooperate. Such ability requires strengthening the existing national and EU 'institutional infrastructure' for cooperation, such as the networks, boards and high-level groups mentioned above.

Many regulatory authorities already have a legal duty to coordinate.[38] However, while co-operation seems to be a no-brainer, regulators consistently report obstacles 'on-the-ground' in collaborating,[39] including constraints on sharing evidence and information. Therefore, there may be a limit on how much cooperation can be achieved without legislative change. **Law-makers should therefore ensure the ability of agencies to exchange information (including those protected by intellectual property or data protection regulations) between them**.[40]

Many EU digital laws already provide some sort of mechanism for regulatory coordination, though these tend to be scattered and ad hoc, such as the European Data Innovation Board under the DGA or the High-Level Group under the DMA. Furthermore, cooperation has also emerged not just through specific bodies set up through legislation, but rather through bilateral processes or memoranda of understanding between different agencies. Multilateral approaches have emerged in a few European jurisdictions including the UK and the Netherlands (each of which has a Digital Regulators Cooperation Forum), and in Ireland, Germany and France.[41]

While these mechanisms are a good idea, **proliferation of different formats may tend to make the regulatory landscape even more complex and difficult to follow**. Many existing forums are bilateral or do not include the full range of relevant stakeholders: the DMA High-Level Group, for example, strangely does not include ENISA or national cybersecurity agencies, despite various DMA rules having potential implications for cybersecurity. **There may be a case for consolidation of some of these coordination formats and bodies, perhaps adopting the concept of 'variable geometry' to acknowledge that on different issues, different configurations of agencies will be stakeholders.**

For cross-country and cross-legal-framework coordination, the functioning of the **DMA High-Level Group could be significantly improved** by increasing the transparency with which it operates and increasing stakeholder engagement, as well as by allowing the group to address specific cases in addition to general policy issues. More fundamentally, its scope could be expanded to cover the entire EU digital acquis, rather than only the DMA and its membership could be extended to cyber protection authorities. It is important to adopt a cross-sectoral approach to coordination, recognising that different enforcement methods exist across regulatory domains. Simplifying the regulatory

[38] Eg, the general legal duty of sincere cooperation (Article 4(3) TEU); or under DMA art 38, EECC, art.11.
[39] https://www.edps.europa.eu/system/files/2025-01/towards_a_digital_clearinghouse_2_0_january_2025_en_0.pdf p 2.
[40] This is a key issue as noted by the EDPS in the Digital Clearing House 2.0 concept paper, para.55.
[41] https://www.edps.europa.eu/system/files/2025-01/towards_a_digital_clearinghouse_2_0_january_2025_en_0.pdf p 7.

framework and structuring it around functional clusters can enhance both effectiveness and clarity for regulated entities.

An alternative would be to establish **a separate and broader coordination forum, such as the Digital Clearing House 2.0** proposed by the EDPS with the following tasks:[42]

- "Identifying needs for common guidance as well as identifying enforcement actions requiring further cooperation or coordination, notably where there is an overlap of competences and/or possibilities for synergies;
- exchanging knowledge, experiences and resources (e.g., mapping industry trends and practices to provide foresight on emerging technologies and business practices, as well as to identify common enforcement priorities);
- exchanging information and promoting best practices as regards cross-regulatory governance and cooperation, including by proposing resources and tools to facilitate cooperation between specific authorities (e.g., a model cooperation protocol or MoU and templates for joint information requests);
- preparing recommendations to the EU legislator on how to create necessary (legal) enablers for effective cross-regulatory cooperation among competent authorities."

If necessary, it might also be necessary to move beyond simply providing greater ability and incentive for regulators to cooperate and coordinate – and to include more comprehensive and clearer obligations on regulators to actively consult and engage with their counterparts. For example, law-makers could consider mandating that regulators consult and co-operate before launching enforcement action.

4.2. Establishing a European System of Digital Regulators

A more radical option would be the establishment of a **European System of Digital Regulators**, with a two-tier structure: [43]

- an EU tier with the creation of a new EU body, the ***European Digital Enforcement Agency (EU-DEA)*** as was already recommended in the Bangemann Report back in 1994,[44] then proposed again in the Letta Report of 2024[45] and by Zenner et al in their Blueprint for Reclaiming our Digital Future;[46] and

[42] https://www.edps.europa.eu/data-protection/our-work/subjects/digital-clearinghouse-20_en, para 46. 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.

[43] G. Monti and A. de Streel, *Improving institutional design to better supervise digital platforms*, CERRE Report, 2022; A. de Streel and Z. Meyers, *EU Regulation and Institutions for Digital Competitiveness*, CERRE Report, November 2025.

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

[45] 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.

[46] Zenner et al, *European Way - A Blueprint for Reclaiming our Digital Future*, 2025, point 40 recommending the creation of an 'independent Digital Enforcement Agency overseeing all AI, data and platform laws (e.g. GDPR, DSA, DMA, AI Act, Data Act). This new agency could impose permanent bans against those companies that have systematically violated EU laws or that act on behalf of a foreign adversary. The Digital

- a national tier with ***National Digital Regulators***, which could naturally evolve from the digital services coordinators set up under the DSA and the telecommunications regulators which implement the EECC.[47]

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.[48]

The **optimum scope of enforcement powers for the new EU-DEA** should be determined by weighing the costs and benefits of EU enforcement. Centralisation may be most justified for large, systemically relevant digital players, while national regulators could retain enforcement responsibilities for smaller firms, where proximity to markets and contextual knowledge remain essential. One option would be that the EU-DEA would take over the direct enforcement powers currently exercised by the European Commission under all digital rulebook laws (such as the DMA, DSA and AIA), as well as the enforcement powers of the various regulatory networks/boards established under the EU digital rulebook against pan-EU operators. 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 EU-DEA. 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 digital firms.

To build on existing institutions rather than starting from scratch, the EBDS and BEREC could be transformed into a fully-fledged EU agency and combined to become the EU-DEA. Its structure and governance could draw inspiration from that of the European Central Bank, featuring a small executive board with extensive powers and a management board.[49] The executive board would consist of full-time members appointed by, but independent from, the Member States, with confirmation by the European Parliament. The management board would be made up of the heads of national digital regulators, who would act in their personal capacity, independently of their national authorities. Given the need for "participatory regulation," a stakeholders' committee should also be established with balanced representation from all stakeholders in the EU digital ecosystem, including regulated firms, their competitors, business and end users.

Ideally, the **EU-DEA would meet the requirements that EU law generally imposes on national regulators, namely independence, accountability, and transparency**. Its decisions would be subject to a Board of Appeal, and those decisions could, in turn, be appealed before the Court of Justice of

Enforcement Agency would also play a crucial role in countering the growing threat of information manipulation and hybrid attacks." This European Digital Enforcement Agency is also explicitly supported by the Greens at the European Parliament: https://www.greens-efa.eu/en/article/press/digitaler-omnibus-gr%C3%BCnen-efa-fordern-umsetzungsbeh%C3%B6rde-statt-freibrief-f%C3%BCr-big-tech.

[47] A hybrid policy option would be to blend part of option B (with the creation of a European Digital Enforcement Agency) and part of option A (with a network of coordination between national digital regulators instead of merging them).

[48] 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 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.

[49] Art. 129 TFEU and Protocol 4 on the Statutes of the European System of Central Banks and the European Central Bank.

the EU. The EU-DEA would require the allocation of sufficient human and financial resources, as well as the power to collect information and impose effective sanctions.

It would be necessary to clearly define what policy-like functions an EU-DEA should have, particularly in a context where the EU could move towards more principles-based laws which entail greater regulatory prioritisation and discretion. While this is inevitable, and regulators will inevitably have to decide how to balance competing policy objectives in the context of particular enforcement cases, it would be important that an independent regulatory agency does not end up making high-level policy trade-offs which should remain at the political level.

Finally, it is important to note that the **establishment of the EU-DEA seems legally possible without changing the EU Treaties**, as current case law is more supportive of creating such agencies than when the EU project began in the 1950s, particularly following the *Meroni* case.[50] In the *ESMA Short Selling* judgement, the Court of Justice of the EU confirmed that, based on Article 114 TFEU, the legislature could 'deem it necessary to provide for the establishment of an EU body responsible for contributing to the implementation of a process of harmonisation,[51] especially when specific professional and technical expertise is required. The Court did then set limits: the agency should not make policy decisions, and its rulings should be subject to judicial review.

In the more recent *Banco Popular* judgement, the Court of Justice confirmed that a delegation which "involves clearly defined executive powers the exercise of which can, therefore, be subject to strict review in the light of objective criteria determined by the delegating authority" to an EU agency is possible without any Treaty change. The Court added that this does not depend on "the individual or general nature of the acts which the agencies are authorised to adopt, but solely on whether the delegation relates to a broad discretionary power or, on the contrary, to executive powers which are precisely delineated."[52]

[50] Case 9/56 *Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community*, EU:C:1958:7.
[51] Case C-270/12, *UK v Parliament and Council (ESMA Short Selling)* EU:C:2014:18, para 104.
[52] Case C-551/22P *Banco Popular*, EU:C:2024:520, para.70 and 73.

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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