THE INNOVATION MANDATE

Making Europe's Digital Supervisory State Accountable for Rights, Growth and Scale

A policy paper for the European Commission, Parliament, Council, DPAs, the EDPB, the AI Office, national AI authorities, Germany and industry

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Central claim

Europe does not need a weaker digital rulebook. It needs a more constitutionally disciplined supervisory state. Where Union law leaves a regulator a lawful choice among materially different routes, the regulator should be required to identify the rights or safety risk, disclose the evidence and assumptions on which it relies, consider less burdensome rights-preserving alternatives, assess implications for legal certainty, investment and scale, and explain why the selected route is proportionate. The proposal is therefore not a substantive privilege for innovation. It is a meta-duty governing the exercise of discretion: a duty of regard, evidence, and public reason-giving that operates beneath the rights floor and outside individual-case direction.

This working paper locates Europe's unresolved digital regulatory problem in the administrative layer between enacted law and market outcomes. The GDPR, AI Act, DSA, DMA and wider *data acquis* necessarily rely on open-textured standards, and the authorities that translate those standards into guidance, priorities, remedies, sandboxes, technical expectations and consistency positions consequently exercise market-shaping power. The innovation mandate proposed here does not authorise unlawful processing, unsafe AI or political interference in individual cases. It requires the institutions to exercise that power to identify the lawful choice set, test credible rights-preserving alternatives, expose the evidence and the distributional consequences of their choices, and provide reasons subject to public and judicial scrutiny.

Executive Summary

Digital regulation has become one of the principal institutional mechanisms through which Europe allocates economic opportunity. The GDPR governs access to and use of personal data; the AI Act governs the route to market for high-risk systems and the public-law conditions surrounding general-purpose AI; the DSA and DMA reshape platform governance and gatekeeper conduct; and the Data Act, Data Governance Act and adjacent instruments determine whether data can be shared, accessed and reused within a coherent European economy. These instruments are not simply compliance codes imposed on otherwise pre-existing markets. They help constitute the markets themselves. The bodies that interpret, coordinate and enforce them consequently exercise economic power in a constitutional sense, even where their statutory self-description remains oriented toward complaints, infringements and sanctions.[1]

The paper rejects the binary choice between a high-rights Europe and an innovative Europe. The relevant question is whether a high-rights legal order can govern technological change through supervision that is sufficiently lawful, expert, coherent, timely and accountable to permit responsible innovation to be financed, tested and scaled. Rights protection can generate trust, discipline harmful business models, improve product quality and prevent firms from externalising social costs. At the same time, unclear, fragmented or mechanically precautionary supervision can generate deadweight uncertainty, entrench incumbents, displace development to jurisdictions with more predictable administrative pathways, and make rights-respecting products harder to finance than products designed elsewhere and imported later. Both propositions can be true. The innovation mandate is designed to keep them in view without allowing either to collapse the other.[2]

The legal basis for this position is stronger than contemporary political rhetoric sometimes suggests. Article 3 TEU commits the Union to sustainable development based on balanced economic growth, a highly competitive social market economy and scientific and technological advance. Articles 16, 114, 173 and 179 TFEU situate data protection, internal market integration, industrial competitiveness and research within the same constitutional order. Articles 7 and 8 of the Charter protect private life and personal data; Article 16 protects the freedom to conduct business; Article 47 protects the right to effective judicial protection; and Article 52 provides the framework for lawful limitations. The point is not to invent a hierarchy in which competitiveness defeats data protection. It is to insist on method: the Union's objectives and rights must be reconciled through legality, necessity, fair balance, safeguards and reasons.[3]

The GDPR already embodies that method. Article 1 protects fundamental rights in relation to the processing of personal data while also safeguarding the free movement of personal data within the Union. Recital 4 states that the right to data protection is not absolute, must be considered in relation to its function in society and must be balanced against other fundamental rights in accordance with proportionality. The doctrinal importance of that recital is often acknowledged, but its administrative implications remain underdeveloped. A recital cannot itself confer a general licence to balance away clear obligations. It can, however, inform the interpretation of open-textured provisions, the justification of supervisory choices, and the operationalisation of the Regulation's internal-market limb. The missing step is a procedure that requires the supervisory authority to expose the proportionality reasoning it already claims to perform.[4]

The AI Act makes the dual orientation even more explicit. Its objective is to improve the functioning of the internal market, promote the uptake of human-centric and trustworthy AI, ensure a high level of protection for health, safety and fundamental rights, and support innovation. Much of the Act's practical meaning will be supplied through harmonised standards, common specifications, guidance, model-evaluation expectations, conformity-assessment practice, market surveillance, post-market monitoring, regulatory sandboxes and

[1] Regulation (EU) 2016/679 (GDPR); Regulation (EU) 2024/1689 (AI Act); Regulation (EU) 2022/2065 (DSA); Regulation (EU) 2022/1925 (DMA); Regulation (EU) 2023/2854 (Data Act); Regulation (EU) 2022/868 (Data Governance Act). Official texts: GDPR, AI Act, DSA, DMA, Data Act, DGA.

[2] Anu Bradford, *Digital Empires: The Global Battle to Regulate Technology* (OUP 2023); Avi Goldfarb and Catherine Tucker, 'Privacy and Innovation' (2012) 12 *Innovation Policy and the Economy* 65; Deirdre Ahern, 'The New Anticipatory Governance Culture for Innovation: Regulatory Foresight, Regulatory Experimentation and Regulatory Learning' (2025 working paper). Goldfarb and Tucker DOI; Ahern working paper.

[3] Consolidated Version of the Treaty on European Union [2012] OJ C 326/13, arts 3 and 5(4); Consolidated Version of the TFEU [2012] OJ C 326/47, arts 16, 114, 173 and 179; Charter, arts 7, 8, 16, 21, 24, 47 and 52. TEU; TFEU; Charter.

[4] GDPR, art 1(1)-(3) and recital 4. The Regulation protects fundamental rights in relation to processing and prohibits restrictions on the free movement of personal data for reasons connected with that protection. Official text.

coordination between national authorities and the AI Office. That implementation layer is not incidental. It will determine whether the Act produces a credible European assurance market or a prolonged period of uncertainty in which only the largest firms can purchase the necessary interpretive capacity.[5]

The Court of Justice's jurisprudence supports a mandate grounded in disciplined justification rather than a deregulatory privilege. *Promusicae*, *Schecke and Eifert*, *ASNEF, FECEMD, and Google Spain show that open legal concepts must be applied through a* fair balance and context-sensitive assessment. *Digital Rights Ireland*, *Tele2 Sverige and Watson*, *La Quadrature du Net*, *Schrems I* and *Schrems II* establish hard constraints where interferences are serious, indiscriminate or insufficiently safeguarded. *Sky Österreich* and *AGET Iraklis* confirm that Article 16 is real but bounded. More recent decisions - including *Meta Platforms v Bundeskartellamt*, *SCHUFA (Scoring)*, *IAB Europe*, *Schrems v Meta Platforms Ireland*, *KNLTB*, *Mousse*, *Dun & Bradstreet Austria* and *Österreichische Datenschutzbehörde v FR* - demonstrate that data-protection interpretation now structures advertising, platform combination, scoring, transparency, model design, data minimisation and the administration of complaints. The jurisprudence is not anti-innovation. It is hostile to unreasoned power, whether exercised by firms or by public authorities.[6]

The economic case must be stated with care. The evidence does not establish that the GDPR alone caused Europe's scale-up gap, nor could it plausibly do so. Studies find firm-level compliance costs, short-run effects on technology investment, changes in product and organisational innovation, and market-structure effects that can be more burdensome for smaller firms. Other work emphasises the potential of privacy regulation to generate trust, quality competition and privacy-enhancing innovation. The robust conclusion is therefore institutional rather than monocausal: regulation and its administration affect the expected cost, timing and uncertainty of lawful deployment; those variables affect investment and scale; and public bodies exercising material discretion over them should be required to consider and explain those effects. That is a claim about accountability, not an econometric claim that privacy law is the sole or dominant cause of Europe's productivity problem.[7]

The policy context has moved rapidly. The Draghi and Letta reports made fragmentation, scale, capital formation and the proposed fifth freedom for research, innovation, knowledge, data and skills central to the Union's strategic agenda. The Competitiveness Compass, the Startup and Scaleup Strategy and the AI Continent Action Plan convert that diagnosis into policy. The two Omnibus files are now at different procedural stages. As of 14 July 2026, Parliament's Legislative Observatory records the general Digital Omnibus as awaiting committee decision. The Digital Omnibus on AI has completed the ordinary legislative procedure: Parliament adopted its final first-reading position on 16 June, the Council adopted the act on 29 June, and the final act was signed on 8 July; publication in the Official Journal remains pending. The divergence is analytically important. One file remains open to legislative amendment, while the other is moving into implementation. Neither position removes the need to reform the supervisory layer, because simplification of the statutory text cannot, by itself, discipline the guidance, evidence standards, priorities, remedies, and coordination through which the revised rules will operate.[8]

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[5] AI Act, art 1 and Titles III, V, VI and VII. The Act combines internal-market, uptake, innovation, health, safety and fundamental-rights objectives and relies on standards, sandboxes, conformity assessment and market surveillance. Official text.

[6] Cases C-275/06 *Promusicae* EU:C:2008:54; C-252/21 *Meta Platforms v Bundeskartellamt* EU:C:2023:537; C-634/21 *SCHUFA (Scoring)* EU:C:2023:957; C-604/22 *IAB Europe* EU:C:2024:214; C-446/21 *Schrems v Meta Platforms Ireland* EU:C:2024:834; C-621/22 *KNLTB* EU:C:2024:857; C-394/23 *Mousse v CNIL and SNCF Connect* EU:C:2025:2; Case C-203/22 *Dun & Bradstreet Austria* (judgment 27 February 2025); Case C-416/23 *Österreichische Datenschutzbehörde v FR* (judgment 9 January 2025). Official case-law database; Official judgment (C-394/23); Official judgment (C-203/22); Official judgment (C-416/23).

[7] Jian Jia, Ginger Zhe Jin and Liad Wagman, 'The Short-Run Effects of the General Data Protection Regulation on Technology Venture Investment' (2021) 40 *Marketing Science* 661; Garrett A Johnson, 'Economic Research on Privacy Regulation: Lessons from the GDPR and Beyond' (NBER Working Paper 30705, December 2022); Knut Blind, Crispin Niebel and Christian Rammer, 'The Impact of the EU General Data Protection Regulation on Product Innovation' (2024) 31 *Industry and Innovation* 311; Avi Goldfarb and Catherine Tucker, 'Privacy and Innovation' (2012) 12 *Innovation Policy and the Economy* 65; James Campbell, Avi Goldfarb and Catherine Tucker, 'Privacy Regulation and Market Structure' (2015) 24 *Journal of Economics & Management Strategy* 47. Jia et al DOI; Johnson at NBER; Goldfarb and Tucker DOI; Campbell et al DOI.

[8] Mario Draghi, *The Future of European Competitiveness* (September 2024); Enrico Letta, *Much More Than a Market* (April 2024); Commission, 'A Competitiveness Compass for the EU' COM(2025) 30; Commission, Digital Omnibus COM(2025) 837 and Digital Omnibus on AI COM(2025) 836. On 14 July 2026, Parliament's Legislative Observatory recorded procedure 2025/0360(COD) as 'Awaiting committee decision'. Procedure 2025/0359(COD) had completed the legislative procedure: Parliament adopted its final first-reading position on 16 June 2026, the Council adopted the act on 29 June, and the final act was signed on 8 July; the file was awaiting publication in the Official Journal. Draghi report; Letta report; General Digital Omnibus procedure; AI Omnibus procedure.

The Union has, however, already taken one important step toward proceduralising supervision. Regulation (EU) 2025/2518 introduces additional procedural rules for cross-border GDPR enforcement. It does not create an innovation mandate, but it confirms the underlying institutional diagnosis: the quality, timing, participation rights and consistency of supervisory procedure are themselves part of effective rights protection. The EDPB's July 2026 draft Template for Cross-Regulatory Cooperation Agreements makes the same point in another register by proposing a structured basis for cooperation among data protection, communications, consumer, and competition authorities. The innovation mandate should build on these developments through a public cross-regulatory compatibility note for major positions that affect more than one digital regime.[9]

The proposed legal reform is a binding secondary duty for EU and national digital regulators. When exercising general functions or discretion of general significance, DPAs, the EDPB, the AI Office and national AI authorities should have regard to responsible innovation, legal certainty, proportionate compliance burdens, investment, competitiveness and sustainable economic development. The duty must operate without prejudice to fundamental rights, the essence of those rights, health and safety, consumer protection, equality, children's interests, DPA independence and the level of protection required by Union law. It should not apply to every operational step or allow external actors to influence individual complaints, investigations, fines or corrective orders. Its trigger should be material, general and prospective: major guidance, recommendations, market-wide interpretations, sandbox criteria, strategic enforcement positions, templates, remedies of general significance and cross-regulatory coordination.[10]

The duty requires machinery. Major supervisory positions should be accompanied by a proportionate supervisory impact statement that identifies the legal issue, the rights or safety risk, the evidence, affected groups, less burdensome rights-preserving alternatives, effects on SMEs and scale-ups, cross-border and cross-regulatory implications, and the reasons for the chosen approach. Authorities should maintain a public evidence register, report against a limited set of balanced KPIs, publish accepted and rejected alternatives, and submit the regime to an independent three-year review. These measures should be subject to a materiality threshold and an administrative-burden ceiling so that the mandate does not become a form of procedural ossification. The purpose is not to replace expert judgment with paperwork. It is to make consequential judgment contestable.[11]

Germany can move first, but the federal architecture must be described accurately. The BfDI can be assigned a statutory secondary duty under the BDSG for its general functions and participation in European and national coordination. The Datenschutzkonferenz, however, is a coordination body of independent federal and Länder authorities, not a single federal authority whose legal mandate can be rewritten by the Bundestag. A legally serious German reform therefore requires a two-level approach: a federal amendment for the BfDI, parallel or model provisions in Länder supervisory laws, and a cooperation framework through which the participating authorities agree on common methods for impact statements, evidence, and reporting. The same independence boundary applies throughout: consultation and expertise are legitimate; direction of individual cases is not.[12]

The settlement can be stated in one sentence: **protect the rights floor absolutely; within the remaining lawful choice set, require digital supervisors to explain why their chosen route is evidence-based, coherent, proportionate, innovation-aware and no more burdensome than the law requires.**

The settlement in one sentence

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[9] Regulation (EU) 2025/2518 on additional procedural rules relating to GDPR enforcement; European Data Protection Board, 'Template for Cross-Regulatory Cooperation Agreements' (draft, 7 July 2026). Procedure Regulation; EDPB template.

[10] The proposed architecture draws on the public-law distinction between primary statutory purposes and secondary duties of regard, together with reason-giving, proportionality and reporting. Compare Data Protection Act 2018, ss 120A-120D (as inserted by the Data (Use and Access) Act 2025), and Financial Services and Markets Act 2023. ICO framework factsheet; FSMA 2023.

[11] Mark Bovens, 'Analysing and Assessing Accountability' (2007) 13 *European Law Journal* 447; Jerry L Mashaw, 'Reasoned Administration' (2007) 76 *George Washington Law Review* 99; Carol Harlow and Richard Rawlings, *Law and Administration* (3rd edn, CUP 2009); Charles F Sabel and Jonathan Zeitlin (eds), *Experimentalist Governance in the European Union* (OUP 2010). Bovens DOI.

[12] GDPR, arts 51-52; Bundesdatenschutzgesetz (BDSG), especially Parts 3 and 4; official sites of the BfDI and Datenschutzkonferenz. The DSK is a coordination conference of independent federal and Länder authorities rather than a single federal supervisory authority. BDSG; BfDI; DSK.

Core Recommendations

No	Recommendation	Policy effect
1	Create a binding secondary meta-duty	DPAs, the EDPB, the AI Office and national AI authorities must have regard to responsible innovation, legal certainty, proportionate burdens, investment, competition and sustainable competitiveness when exercising general functions or discretion of general significance.
2	Preserve the rights floor expressly.	The duty must be without prejudice to fundamental rights, equality, health, safety, consumer protection, children, complete independence and the level of protection required by Union law; it creates no defence to breach.
3	Define the lawful choice set.	The mandate operates only where more than one outcome is legally permissible. It cannot reopen a statutory prohibition, the essence of a right or a hard floor fixed by the Court.
4	Use a materiality-based trigger.	Apply the duty to major guidance, recommendations, priorities, sandboxes, templates, consistency positions, cross-regulatory coordination and remedies of general significance - not to every operational step.
5	Require supervisory impact statements.	Major positions must identify the legal question, risks, evidence, affected groups, alternatives, distributional effects, cross-border implications and proportionality reasons.
6	Create a public evidence register.	Publish non-confidential evidence, assumptions and stakeholder submissions, together with reasons for accepting or rejecting the principal alternatives.
7	Require cross-regulatory compatibility notes.	Where GDPR, AI Act, DSA, DMA, consumer, competition or data-access duties overlap, authorities should identify conflicts, sequencing and residual divergence before finalising major positions.
8	Adopt balanced accountability metrics.	Report on rights outcomes, certainty, consistency, timeliness, remedy proportionality, SME access, sandbox learning, cross-regulatory coordination and enabled or redesigned lawful deployment.
9	Build advisory challenge with anti-capture safeguards	Panels must be balanced, public and non-case-specific; agendas, conflicts, evidence and authority responses should be published.
10	Move first in Germany through a two-level model.	Amend the BDSG for the BfDI and develop parallel Länder or inter-authority arrangements for common methods, recognising that the DSK is a coordination body rather than a single federal authority.
11	Separate legislative amendment from implementation	Use the pending general Digital Omnibus where appropriate; for the completed AI Omnibus, pursue the duty through implementation practice, reporting, coordination and, if necessary, a future targeted amendment.
12	Add an independent three-year review.	Evaluate whether the mandate improved reasons, consistency, protection and lawful deployment; narrow or repeal mechanisms that generate capture, delay or ceremonial paperwork.

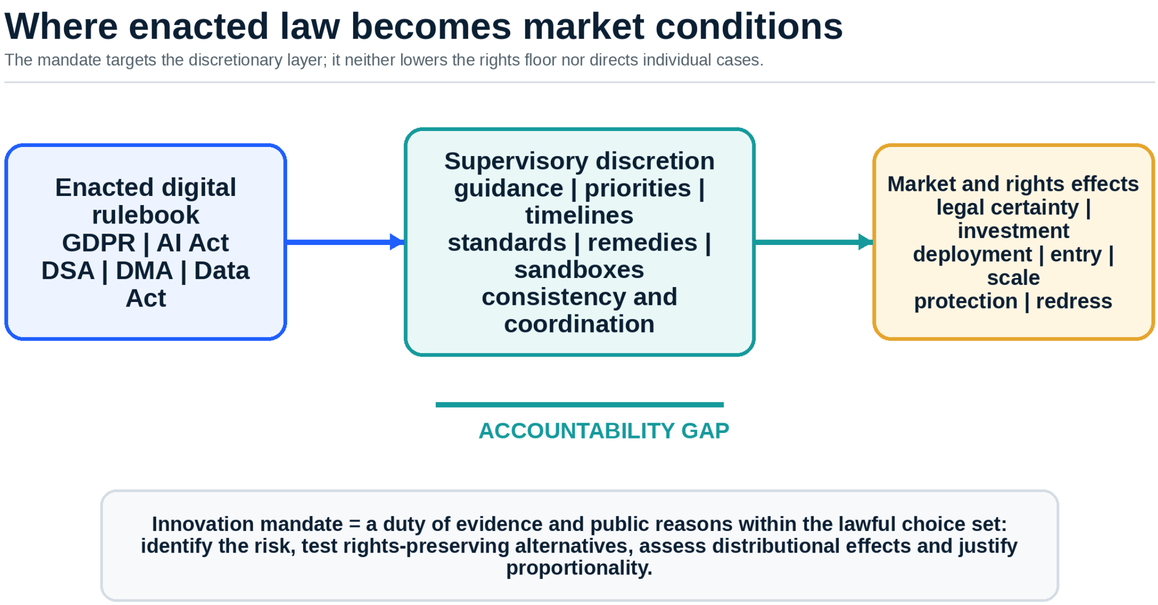

Figure 1: Digital supervision allocates economic opportunity through the discretionary layer between enacted law and market outcomes.[13][14]

[13] Regulation (EU) 2016/679 (GDPR); Regulation (EU) 2024/1689 (AI Act); Regulation (EU) 2022/2065 (DSA); Regulation (EU) 2022/1925 (DMA); Regulation (EU) 2023/2854 (Data Act); Regulation (EU) 2022/868 (Data Governance Act). Official texts: GDPR, AI Act, DSA, DMA, Data Act, DGA.

[14] Giandomenico Majone, 'The Rise of the Regulatory State in Europe' (1994) 17 *West European Politics* 77; Julia Black, 'Decentring Regulation' (2001) 54 *Current Legal Problems* 103; Merijn Chamon, *EU Agencies: Legal and Political Limits to the Transformation of the EU Administration* (OUP 2016). Majone DOI; Black DOI.

1. The Real Problem: A Governance Gap, not a Plea for Deregulation

The wrong starting point is that Europe must choose between strong rights protection and technological scale. The relevant distinction is not between regulation and innovation, but between regulation that disciplines both private and public power and regulation whose administrative translation remains opaque. A high-rights legal order may impose demanding substantive obligations and still support innovation where the route to compliance is intelligible, the evidential standard is stable, cross-border interpretations converge, and regulators respond within commercially meaningful timeframes. Conversely, a nominally flexible rule can become more restrictive than a clear prohibition when every important concept is resolved slowly, inconsistently or through informal expectations that cannot readily be challenged.[15]

The innovation mandate therefore begins with a concept of the *lawful choice set*. Some questions are settled by the legislature or by binding judicial interpretation. Where the processing lacks a legal basis, a prohibited AI practice is engaged, a transfer lacks essentially equivalent protection, the essence of a right is impaired, or a serious risk cannot be reduced to an acceptable level, an innovation argument does no legal work. Other questions leave a genuine range: the form and timing of guidance, the evidence required to demonstrate mitigation, the design of a sandbox, whether a staged remedy can secure compliance, the coordination of overlapping assessments, or the degree of detail demanded from a low-risk actor. The mandate operates only in that second category. Its function is to ensure that the regulator selects within the lawful set through evidence, proportionality and reasons rather than through institutional habit or unarticulated precaution.[16]

The distinction also answers an important conceptual objection. Proportionality cannot mean that every compliance burden must be minimised, because the protection of rights and safety often requires burdens that are substantial, costly and non-negotiable. Nor does "less burdensome" mean commercially preferred. The relevant comparator is a lawful alternative that achieves an equivalent level of protection with lower collateral cost, greater clarity or better distributional consequences. A regulator may rationally reject that alternative because the evidence is weak, enforcement is impracticable, vulnerable groups remain exposed, or residual risk is too high. What it should not do is decline to identify the comparison at all.[17]

1.1 Why this is a Regulatory-State Problem

The deeper theoretical point is familiar from the literature on the regulatory state. Modern regulators do not merely subsume facts under complete statutory rules after the legislature has performed the normative work. They specify standards, rank risks, select instruments, create expectations through guidance and soft law, negotiate compliance, monitor systems over time and coordinate with other bodies. Majone's account of the European regulatory state, Black's analysis of decentred regulation, the responsive-regulation tradition and the literature on experimentalist governance differ in their prescriptions. Still, they share a descriptive insight: contemporary regulation is produced through iterative networks of public and private actors rather than through a single legislative command.[18]

Digital regulation intensifies that phenomenon. Legislatures deliberately use technologically neutral and risk-based language, while compliance increasingly turns on systems, datasets, model behaviour and organisational processes rather than on a single observable act. The regulator must therefore translate broad norms into operational expectations: what counts as sufficient anonymisation; when a commercial interest is legitimate; when model training is compatible with purpose limitation; what a meaningful explanation contains; how a

[15] Legal certainty is a general principle of Union law and a central concern of the Commission's better-regulation framework. See Commission, *Better Regulation Guidelines* SWD(2021) 305 and the Better Regulation Toolbox, as updated. Commission better-regulation materials.

[16] The distinction between binding legal limits and administrative choice follows the structure of proportionality and judicial review: Charter art 52(1); TEU art 5(4); Case C-331/88 *Fedesa* EU:C:1990:391; Case C-112/00 *Schmidberger* EU:C:2003:333. Official judgment (C-331/88); Official judgment (C-112/00).

[17] Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (CUP 2012); Robert Alexy, *A Theory of Constitutional Rights* (OUP 2002); Takis Tridimas, *The General Principles of EU Law* (OUP); Case C-331/88 *Fedesa* EU:C:1990:391. Official judgment.

[18] Majone (1994) 17 *West European Politics* 77; Black (2001) 54 *Current Legal Problems* 103; Ian Ayres and John Braithwaite, *Responsive Regulation* (OUP 1992); Robert Baldwin and Julia Black, 'Really Responsive Regulation' (2008) 71 *Modern Law Review* 59; Sabel and Zeitlin (eds), *Experimentalist Governance in the European Union* (OUP 2010). Baldwin and Black DOI.

high-risk system is classified; which metrics demonstrate robustness; what monitoring period is adequate; how platform-risk mitigation interacts with data minimisation; and what evidence is required before a staged deployment can proceed. These are neither purely technical nor purely legal judgments. They allocate uncertainty, cost and opportunity.[19]

The use of soft law makes accountability more, not less, important. Guidance may formally lack binding force, yet firms, auditors, notified bodies, investors and national authorities often treat it as the practical benchmark against which conduct will later be judged. Judicial review may arrive only after years of investment or after the relevant product window has closed. The result is a familiar asymmetry: the authority retains the flexibility of non-binding guidance while the market experiences much of the discipline of binding law. A requirement to publish the evidence, alternatives and proportionality basis for major guidance is therefore not an attempt to convert every guideline into legislation. It is a response to the real-world authority that guidance already carries.[20]

1.2 The Distributional Consequences of Uncertainty

Regulatory uncertainty is not evenly distributed. Large incumbents can retain specialist counsel, participate in every consultation, maintain direct relationships with several authorities, operate parallel technical architectures and absorb delay. Smaller firms face a different calculus. Fixed compliance costs consume a larger share of capital; divergent national interpretations can undermine a single-market strategy; a delayed classification decision may exhaust a financing runway; and the inability to price regulatory risk can cause investors to discount an otherwise viable product. In those conditions, formally equal obligations can produce structurally unequal market effects.[21]

This does not establish that the answer is lighter treatment for small firms. Rights violations do not become less serious because the controller is a startup, nor can small firms deploy technologies at scale with limited internal capacity. The correct response is differentiated administrative support and risk-sensitive implementation: clearer templates, shared testing resources, accessible sandboxes, faster answers to threshold questions, staged remedies where safe, and public guidance that reduces the premium paid for private access. The innovation mandate should therefore treat SME and scale-up effects as an evidential consideration, not as an exemption.[22]

The distributional point also has a competition-law dimension. Where compliance requires proprietary infrastructure, repeated bilateral engagement or knowledge available only through specialist networks, regulation may entrench the firms best placed to bear those costs. Campbell, Goldfarb and Tucker show why privacy regulation can alter market structure, while the broader economics of fixed regulatory costs explains why formal neutrality can increase concentration. The institutional implication is not that protection should be reduced, but that supervisors should identify when their chosen implementation route creates avoidable entry barriers and whether a common template, an interoperable standard, or a shared assurance mechanism can secure the same protection more evenly.[23]

1.3 The Mandate must be Narrower than the Politics

The proposal must remain narrower than the political language of "competitiveness". It should have no independent work where the legal text is clear, where the Court has fixed a hard floor, where the essence of a right would be compromised, where health or safety risk is unacceptable, where children or vulnerable groups would face unjustified harm, or where the authority is deciding an individual case that must remain insulated

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[19] GDPR, arts 5, 6, 9, 22, 25, 32, 35, 40-43, 46, 57, 58 and 70; AI Act, arts 6, 9-15, 51-56, 57-63 and 74; DSA, arts 34-40; DMA, arts 5-8. Official texts are available on EUR-Lex.

[20] On the practical and legal effects of EU soft law, see Linda Senden, *Soft Law in European Community Law* (Hart 2004); Mariolina Eliantonio and others (eds), *EU Soft Law in the Member States* (Hart 2021); Paul Craig, *EU Administrative Law* (OUP).

[21] James Campbell, Avi Goldfarb and Catherine Tucker, 'Privacy Regulation and Market Structure' (2015) 24 *Journal of Economics & Management Strategy* 47; Goldfarb and Tucker, 'Privacy and Innovation' (2012) 12 *Innovation Policy and the Economy* 65. Campbell et al DOI; Goldfarb and Tucker DOI.

[22] Commission, *The EU Startup and Scaleup Strategy: Choose Europe to Start and Scale* COM(2025) 270; EDPB, SME Data Protection Guide. Strategy; EDPB SME guide.

[23] James Campbell, Avi Goldfarb and Catherine Tucker, 'Privacy Regulation and Market Structure' (2015) 24 *Journal of Economics & Management Strategy* 47; Goldfarb and Tucker, 'Privacy and Innovation' (2012) 12 *Innovation Policy and the Economy* 65. Campbell et al DOI; Goldfarb and Tucker DOI.

from external influence. It should apply where the authority is shaping prospective, generally applicable expectations within an area of lawful discretion.[24]

That narrowness is not a tactical concession. It is the doctrinal basis of the reform. A broad growth objective would invite rights dilution, capture, defensive litigation and pressure on individual cases. A bounded procedural duty can instead make four commitments simultaneously: the rights floor is non-negotiable; decisional independence is preserved; innovation claims must be evidenced; and regulators must account for the external effects of their general choices. The mandate is strongest when it regulates the regulator's method rather than predetermining the regulator's answer.[25]

2. The Legal Foundation: The Mandate Is Already Inside EU Law

2.1 Treaty Architecture

Article 3 TEU situates the Union's economic and social project within sustainable development, balanced economic growth, a highly competitive social market economy, social progress and scientific and technological advance. Article 5(4) TEU requires that Union action be no more than necessary to achieve the Treaty objectives. In the TFEU, Article 16 constitutionalises data protection, Article 114 supports harmonisation for the internal market, Article 173 addresses industrial competitiveness and Article 179 commits the Union to strengthening its scientific and technological bases. None of these provisions supplies a ready-made answer to an individual data-protection or AI-law dispute. Together, however, they defeat the proposition that innovation and competitiveness are external political considerations with no place in the administration of market-making Union law.[26]

The Charter defines the relevant boundaries and the method of reconciliation. Articles 7 and 8 protect private life and personal data; Article 16 protects the freedom to conduct a business; Article 21 protects against discrimination; Article 24 gives children's interests constitutional weight; Article 47 protects effective judicial protection; and Article 52 requires limitations to be provided for by law, to respect the essence of rights and, subject to proportionality, to be necessary to recognised objectives of general interest or the rights of others. A lawful innovation mandate must therefore be drafted as an instrument for Article 52 reasoning, not as a route around it. It cannot monetise the essence of a right or treat economic advantage as sufficient justification for serious interference.[27]

The key legal move is to distinguish *substantive balance* from *administrative justification*. The legislature and the Court determine the legal parameters within which competing rights and objectives may be reconciled. A supervisory mandate cannot reopen those parameters. But where the law leaves more than one permissible administrative route, the authority must still justify why it selected one. Requiring an authority to consider effects on lawful economic activity, to test less restrictive rights-preserving alternatives and to explain its reasons does not elevate Article 16 over Articles 7 and 8. It gives practical effect to the proportionality and good-administration disciplines already embedded in Union law.[28]

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[24] The limitation follows Charter art 52(1), GDPR art 52 and the Court's independence and strict-necessity case law. See Cases C-518/07 *Commission v Germany* EU:C:2010:125 and C-311/18 *Schrems II* EU:C:2020:559. Official judgment (C-518/07); Official judgment (C-311/18).

[25] The proposed architecture draws on the public-law distinction between primary statutory purposes and secondary duties of regard, together with reason-giving, proportionality and reporting. Compare Data Protection Act 2018, ss 120A-120D (as inserted by the Data (Use and Access) Act 2025), and Financial Services and Markets Act 2023. ICO framework factsheet; FSMA 2023.

[26] TEU, arts 3 and 5(4); TFEU, arts 16, 114, 173 and 179. TEU; TFEU.

[27] Charter, arts 7, 8, 16, 21, 24, 47 and 52. Official text.

[28] Charter arts 41, 47 and 52; Case C-269/90 *Technische Universität München* EU:C:1991:438; Case C-367/95 P *Commission v Sytraval* EU:C:1998:154; Paul Craig, *EU Administrative Law* (OUP). Official judgment (C-269/90); Official judgment (C-367/95 P).

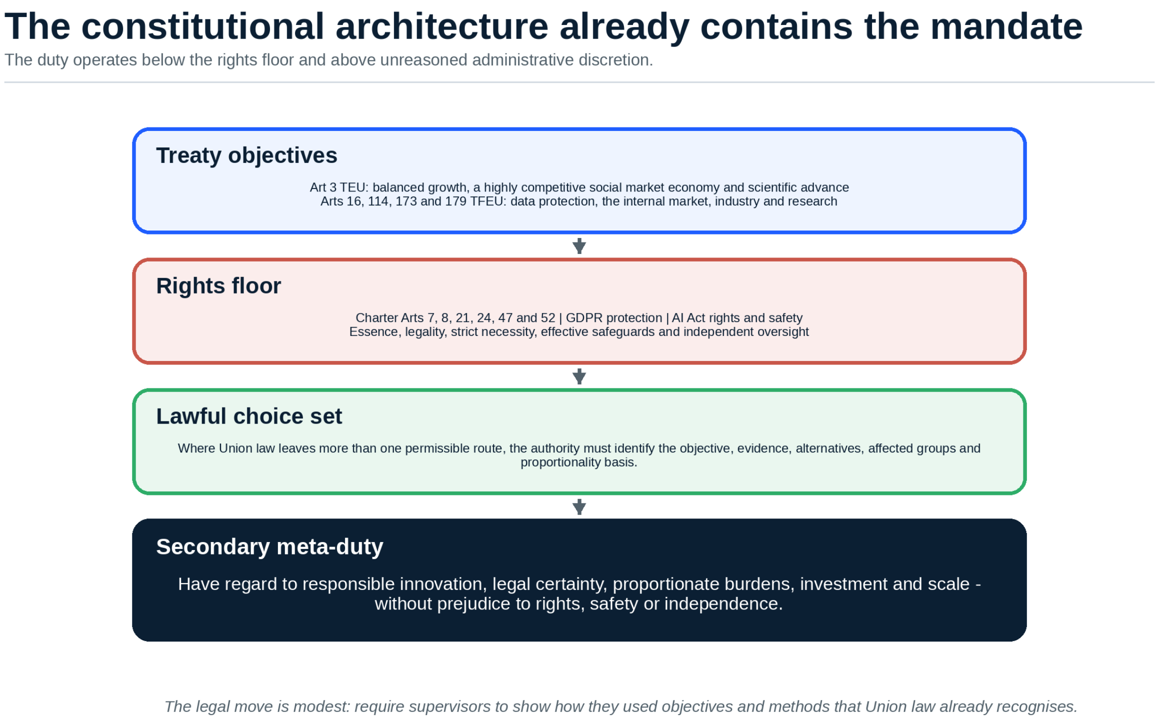

Figure 2: The innovation mandate sits within the Treaty and Charter architecture, beneath the rights floor and above unreasoned administrative discretion.[29][30][31]

2.2 The GDPR is a Dual-Objective Internal-Market Instrument

The GDPR is routinely described as a privacy law, which is politically understandable but legally incomplete. Article 1(1) sets out rules governing the protection of natural persons about the processing of personal data and the free movement of personal data. Article 1(2) protects fundamental rights and freedoms, in particular the right to data protection. Article 1(3) then provides that the free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with that protection. Recital 4 adds the constitutional instruction that data protection is not absolute and must be balanced against other fundamental rights in accordance with the principle of proportionality.[32]

The free-movement limb does not mean that any national or supervisory divergence is unlawful; the Regulation itself preserves areas of Member State discretion. Nor can Recital 4 be used to create an extra-statutory legal basis or to neutralise a clear prohibition. Its significance is interpretive and institutional. Where provisions such as necessity, legitimate interests, compatibility, data minimisation, anonymisation, risk, safeguards and corrective measures require judgment, the Regulation directs that judgment toward a high and effective level of protection within a functioning internal market. The relevant task is not to trade privacy against GDP in the abstract. It is to identify a lawful route that secures the protective purpose without adding avoidable fragmentation or formalism.[33]

The Court's pre-GDPR jurisprudence supplies the constitutional matrix. In *Österreichischer Rundfunk*, the Court treated the processing and publication of remuneration data as an interference requiring justification. In *Schecke*

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[29] Consolidated Version of the Treaty on European Union [2012] OJ C 326/13, arts 3 and 5(4); Consolidated Version of the TFEU [2012] OJ C 326/47, arts 16, 114, 173 and 179; Charter, arts 7, 8, 16, 21, 24, 47 and 52. TEU; TFEU; Charter.
[30] GDPR, art 1(1)-(3) and recital 4. The Regulation protects fundamental rights in relation to processing and prohibits restrictions on the free movement of personal data for reasons connected with that protection. Official text.
[31] AI Act, art 1 and Titles III, V, VI and VII. The Act combines internal-market, uptake, innovation, health, safety and fundamental-rights objectives and relies on standards, sandboxes, conformity assessment and market surveillance. Official text.
[32] GDPR, art 1(1)-(3) and recital 4. The Regulation protects fundamental rights in relation to processing and prohibits restrictions on the free movement of personal data for reasons connected with that protection. Official text.
[33] GDPR, recitals 4, 74-77 and arts 5, 24, 25, 32 and 35; Claudia Quelle, 'Enhancing Compliance under the GDPR: The Risky Upshot of the Accountability- and Risk-based Approach' (2018) 9 *European Journal of Risk Regulation* 502. GDPR; Quelle DOI.

and Eifert, it rejected undifferentiated publication because the legislature had not adequately examined more targeted means. In *Digital Rights Ireland*, strict necessity, objective criteria and effective safeguards were indispensable in the face of generalised retention. These decisions do not imply that the least economically costly route must always prevail. They demonstrate that legitimate public objectives do not dispense with a structured account of means, alternatives and safeguards.[34]

The administrative deficit lies in converting that constitutional method into supervisory practice. An EDPB guideline may select among several plausible readings, determine the evidential burden required to establish anonymisation or legitimate interests, or specify the mitigation expected in AI development. A national authority may adopt an enforcement priority or remedy that becomes a market signal across a sector. Yet the published document may state the preferred answer without disclosing the alternatives considered, the empirical assumptions, the implications for cross-border operation or the reasons why a narrower route was insufficient. The innovation mandate would not alter the substantive legal test. It would require the institution that operationalises the test to make its reasoning visible.[35]

That requirement is consistent with the Commission's second GDPR application report, the EDPB's own calls for clarity and support, the FRA's analysis of supervisory practice and the Union's subsequent adoption of Regulation (EU) 2025/2518 on cross-border enforcement procedure. Together, they show that effectiveness under the GDPR depends not only on substantive rules and fines but also on cooperation, procedural fairness, timeliness, consistency, and the usability of guidance. An innovation-aware duty should be understood as an extension of that administrative agenda, not as an external attack on the Regulation.[36]

2.3 The AI Act makes the Innovation Objective Explicit

The AI Act is an even clearer example of a constitutionally plural instrument. Article 1 combines improved internal market functioning with the promotion of human-centric and trustworthy AI, a high level of protection for health, safety, and fundamental rights, support for innovation, and protection against harmful effects. Its risk architecture depends on distinctions that require continuous interpretation: whether a system falls within a listed high-risk category, whether an exception applies, how substantial modification is understood, what constitutes adequate data governance, which tests demonstrate robustness, when a serious incident must be reported, and how general-purpose AI obligations interact with downstream use.[37]

Implementation will be delivered through a layered institutional ecology: the AI Office, national competent authorities, market surveillance authorities, notifying authorities, notified bodies, standardisation organisations, scientific experts, sandboxes, codes of practice, and sectoral regulators. A firm's route to market may depend less on the abstract proposition that an obligation is proportionate than on whether these actors converge on evidence expectations in time for design and financing decisions. Administrative delay is therefore not neutral. Where standards are immature, and classification is uncertain, delay confers an advantage on firms able to operate across multiple jurisdictions or handle several compliance scenarios simultaneously.[38]

The Commission's November 2025 Digital Omnibus on AI proposal acknowledged implementation friction, delayed standards, legal uncertainty and the need for practical guidance and simplification. By 14 July 2026, the legislative procedure had been completed and the final act signed, although publication in the Official Journal remained pending. That procedural endpoint changes the institutional route but not the underlying argument. The mandate can no longer be added to that concluded negotiation; it must instead be pursued through the

[34] Joined Cases C-465/00, C-138/01 and C-139/01 *Österreichischer Rundfunk* EU:C:2003:294; Joined Cases C-92/09 and C-93/09 *Schecke and Eifert* EU:C:2010:662; Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland* EU:C:2014:238. Official judgment (joined C-465/00 etc); Official judgment (joined C-92/09 etc); Official judgment (joined C-293/12 etc).

[35] GDPR, arts 70-71; European Data Protection Board, Guidelines, Recommendations and Best Practices register. EDPB documents.

[36] Commission, 'Second report on the application of the GDPR' COM(2024) 357; EDPB, Statement 6/2024; EU Agency for Fundamental Rights, *GDPR in Practice: Experiences of Data Protection Authorities* (2024); Regulation (EU) 2025/2518. Commission report; FRA report; Regulation 2025/2518.

[37] AI Act, art 1 and Titles III, V, VI and VII. The Act combines internal-market, uptake, innovation, health, safety and fundamental-rights objectives and relies on standards, sandboxes, conformity assessment and market surveillance. Official text.

[38] Michael Veale and Frederik Zuiderveen Borgesius, 'Demystifying the Draft EU Artificial Intelligence Act' (2021) 22 *Computer Law Review International* 97; Claudio Novelli, Philipp Hacker, Jessica Morley, Jarle Trondal and Luciano Floridi, 'A Robust Governance for the AI Act: AI Office, AI Board, Scientific Panel, and National Authorities' (2024 working paper); Dave Lewis, Marta Lasek-Markey, Delaram Golpayegani and Harshvardhan J Pandit, 'Mapping the Regulatory Learning Space for the EU AI Act' (2025 working paper); Deirdre Ahern, 'The New Anticipatory Governance Culture for Innovation' (2025 working paper). Veale and Zuiderveen Borgesius DOI; Novelli et al working paper; Lewis et al working paper; Ahern working paper.

implementation framework for the amended Act, transparent supervisory policy, reporting and cooperation duties, or a future targeted amendment. Until the final act is published, its precise legal consequences should not be overstated. What is already clear is that any revised timetable or allocation of competence will still require authorities to convert statutory change into coherent, timely and reviewable supervisory practice.[39]

A well-designed duty would apply to both the AI Office and national authorities. Restricting it to the AI Office would miss many decisions that determine commercial reality: classification advice, market-surveillance priorities, corrective-action sequencing, sandbox admission, interaction with harmonised standards and the treatment of evidence before standards mature. The duty should also require public translation of sandbox learning into generally available guidance, so that sandboxes do not become privileged bilateral pathways whose benefits accrue only to participants with access.[40]

2.4 Reason-Giving, Soft Law and Contestability

The constitutional case for the mandate is ultimately a case about public reason. Reason-giving performs several functions at once: it disciplines the decision-maker, reveals whether relevant considerations were ignored, permits affected actors to correct factual assumptions, enables judicial review, supports coordination and allows political institutions to assess whether the statutory framework is working. Bovens's account of accountability, Mashaw's theory of reasoned administration and the European administrative-law literature all emphasise that public power becomes more legitimate when those who exercise it must explain themselves to a forum capable of questioning the account.[41]

That function is particularly important where guidance and networked coordination are difficult to challenge directly. The absence of formal binding force does not eliminate legal or economic effect; it often shifts contestation to a later enforcement stage, when the regulated actor bears the risk of non-compliance. A supervisory impact statement creates an earlier and more proportionate point of contestation. It does not require a full legislative impact assessment for every document. It requires the authority to identify the problem, evidence, alternatives and consequences at a level proportionate to the general significance of the position.[42]

The mandate should therefore be conceived as an *administrative constitutionalisation* of discretion. It brings the same values that structure judicial review - legality, relevant considerations, proportionality, reasons and effective protection - into the stage at which regulatory expectations are formed. That is why its legal bite is orthodox. A court would not ask whether the authority chose the most innovative policy. It would ask whether the authority remained within the lawful choice set, addressed the mandatory factors, supported material empirical claims, gave an intelligible explanation and respected the rights floor.[43]

3. European Jurisprudence: The Court Has Already Built the Guardrails

3.1 Fair Balance is a Method, not an Industry Talking Point

The Court of Justice has never adopted a general rule that data protection requires maximum restriction irrespective of context. In *Promusicae*, it required Member States to ensure a fair balance among competing fundamental rights when transposing and applying Union law. *Schecke and Eifert* invalidated a disclosure regime

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[39] Commission, Proposal for a Regulation amending Regulations (EU) 2024/1689 and (EU) 2018/1139 as regards simplification of the implementation of harmonised rules on artificial intelligence, COM(2025) 836 final, 19 November 2025. By 14 July 2026, procedure 2025/0359(COD) was completed and awaiting publication in the Official Journal: Parliament adopted the final first-reading position on 16 June, the Council adopted the act on 29 June and the final act was signed on 8 July. Commission proposal; Official procedure file.

[40] AI Act, arts 57-63; Commission, Draft Implementing Regulation on AI regulatory sandboxes (2 December 2025); Deirdre Ahern, 'Operationalising AI Regulatory Sandboxes under the EU AI Act: The Triple Challenge of Capacity, Coordination and Attractiveness to Providers' (2025 working paper). Official AI Act; Commission AI Act implementation portal; Ahern working paper.

[41] Mark Bovens, 'Analysing and Assessing Accountability' (2007) 13 *European Law Journal* 447; Jerry L Mashaw, 'Reasoned Administration' (2007) 76 *George Washington Law Review* 99; Carol Harlow and Richard Rawlings, *Law and Administration* (3rd edn, CUP 2009); Charles F Sabel and Jonathan Zeitlin (eds), *Experimentalist Governance in the European Union* (OUP 2010). Bovens DOI.

[42] On the practical and legal effects of EU soft law, see Linda Senden, *Soft Law in European Community Law* (Hart 2004); Mariolina Eliantonio and others (eds), *EU Soft Law in the Member States* (Hart 2021); Paul Craig, *EU Administrative Law* (OUP).

[43] Charter arts 47 and 52; Case C-269/90 *Technische Universität München* EU:C:1991:438; Case C-367/95 P *Commission v Sytraval* EU:C:1998:154; Paul Craig, *EU Administrative Law* (OUP). Official judgment (C-269/90); Official judgment (C-367/95 P).

that failed to differentiate adequately between categories of recipients and effects. *ASNEF and FECEMD* prevented Member States from converting the Directive's legitimate-interests balance into an additional categorical condition. *Google Spain*, while strongly protective of data-subject interests, still proceeded with a contextual assessment of the data subject, the controller, the public interest, and the nature of the information. These cases create no innovation privilege. They establish a disciplined method of justification.[44]

That method is not equivalent to free-form balancing. Proportionality requires the objective to be legally recognised and sufficiently specified; the measure to be suitable; less restrictive means to be considered where they are equally effective; and the burden imposed not to be excessive in relation to the objective pursued. In fundamental-rights cases, the intensity of review depends on the seriousness of the interference, the discretion available to the legislature or authority, the quality of safeguards and the vulnerability of affected persons. The innovation mandate should mirror that structure. It should not ask whether innovation is generally valuable, but whether a concrete supervisory choice imposes avoidable burdens relative to a specified protective objective.[45]

3.2 Hard Rights Floors and Strict Necessity

Digital Rights Ireland, Tele2 Sverige/Watson, La Quadrature du Net, Schrems I, and Schrems II provide the necessary counterweight to any growth-centred reading. Where surveillance, retention, or transfer regimes produce serious interference without strict limits, independent oversight, enforceable safeguards, and effective remedies, broad appeals to security, administrative convenience, or economic interest do not suffice. The Court's insistence on the essence of rights and strict necessity identifies areas in which the lawful choice set is sharply constrained or closed.[46]

This jurisprudence explains why the rights-preservation clause is constitutive rather than ornamental. The innovation mandate cannot authorise general and indiscriminate retention, validate a transfer framework that lacks essentially equivalent protection, dilute a prohibition in the AI Act or permit a supervisory authority to waive a statutory obligation. Where the Court or legislature has fixed the minimum level of protection, the mandate's role is limited to clarity, coherence and proportionate implementation. It can require the regulator to explain how the floor is operationalised; it cannot lower the floor.[47]

3.3 Article 16 is Limited, but it is not Decorative

Article 16 of the Charter is sometimes treated as a courtesy heading rather than a right. *Sky Österreich* and *AGET Iraklis* demonstrate a more precise position. The freedom to conduct a business may be subject to extensive regulation. It may yield to objectives of general interest and the rights of others, but it remains part of the proportionality inquiry. The Court assesses the nature and extent of the restriction, the objective pursued and the balance achieved. Article 16 is therefore neither a trump nor a nullity.[48]

That matters in digital supervision because a general interpretation may decide whether a product is viable, whether a model can be trained, whether a data-sharing arrangement can scale, whether targeted advertising can lawfully operate, whether a credit-scoring service is structured around automated decision-making, or whether the costs of entering several Member States are tolerable. Article 16 cannot defeat Articles 7 and 8. It can require the public authority to acknowledge and justify a material burden on lawful economic activity where a rights-preserving alternative is plausibly available.[49]

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[44] Case C-275/06 *Promusicae* EU:C:2008:54; Joined Cases C-92/09 and C-93/09 *Schecke and Eifert* EU:C:2010:662; Joined Cases C-468/10 and C-469/10 *ASNEF and FECEMD* EU:C:2011:777; Case C-131/12 *Google Spain* EU:C:2014:317. Official judgment (C-275/06); Official judgment (joined C-468/10 etc); Official judgment (C-131/12).

[45] Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (CUP 2012); Robert Alexy, *A Theory of Constitutional Rights* (OUP 2002); Takis Tridimas, *The General Principles of EU Law* (OUP); Case C-331/88 *Fedesa* EU:C:1990:391. Official judgment.

[46] Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland* EU:C:2014:238; Joined Cases C-203/15 and C-698/15 *Tele2 Sverige and Watson* EU:C:2016:970; Joined Cases C-511/18, C-512/18 and C-520/18 *La Quadrature du Net* EU:C:2020:791; Case C-362/14 *Schrems I* EU:C:2015:650; Case C-311/18 *Schrems II* EU:C:2020:559. EUR-Lex case law.

[47] Charter art 52(1); GDPR arts 5, 6, 9, 22, 44-49 and 52; AI Act arts 5 and 6-27; *Digital Rights Ireland*, *Tele2 Sverige and Watson*, *Schrems I* and *Schrems II*. Official texts and judgments are available on EUR-Lex.

[48] Case C-283/11 *Sky Österreich* EU:C:2013:28; Case C-201/15 *AGET Iraklis* EU:C:2016:972. Official judgment (C-283/11); Official judgment (C-201/15).

[49] Charter arts 7, 8, 16 and 52; *Sky Österreich*; *AGET Iraklis*; *Meta Platforms v Bundeskartellamt*. Official Charter; Official judgment (C-252/21).

3.4 Recent Data Cases Show Why Supervisory Accountability Matters

The post-GDPR case law is economically constitutive. *Meta Platforms v Bundeskartellamt* placed data-protection analysis within platform competition and cross-service data combination. *SCHUFA (Scoring)* interpreted Article 22 in a manner capable of restructuring credit-information markets. *IAB Europe* addressed controllership and personal data within the architecture of real-time advertising. *Schrems v Meta Platforms Ireland* constrained the breadth and temporal scope of data used for personalised advertising. *KNLTB* confirmed that a commercial interest may, in principle, be legitimate, but only where necessary, with reasonable expectations, and subject to the overriding rights of data subjects. *Mousse* placed data minimisation and identity categories at the centre of service design. *Dun & Bradstreet Austria* deepened the requirement for meaningful information about automated decision-making, and *Österreichische Datenschutzbehörde v FR* addressed the administration of repetitive complaints. Each case is rights-centred; each alters market conditions.[50]

The institutional consequence is not that a DPA must soften its interpretation when the economic effect is large. In many cases, the economic effect is large because the practice is central to a business model built on intensive data use, which may warrant closer scrutiny rather than restraint. The consequence is that supervisory translation must be correspondingly rigorous. A market-wide position should identify the doctrinal proposition, the factual assumptions, the affected rights, the relevant economic dependencies, the available technical or organisational safeguards and the reason those safeguards are sufficient or insufficient. A demanding answer becomes more legitimate, not less, when the authority demonstrates that it considered the strongest lawful alternative and rejected it for reasons that can survive scrutiny.[51]

3.5 Independence is a Design Constraint, not a Veto

The independence objection is serious. In *Commission v Germany*, *Commission v Austria* and *Commission v Hungary*, the Court insisted that data-protection authorities must remain free from external influence, including state influence that could affect the performance of supervisory tasks. Article 52 GDPR codifies complete independence. A mandate would therefore be unlawful if ministers, parliamentary committees, industry panels or other regulators could direct the outcome of an individual complaint, investigation, corrective measure or fine.[52]

That is not the proposal. Independence concerns decisional autonomy; it does not erase public-law structure. Legislatures may define statutory objectives, reporting duties, consultation procedures, evidential requirements, and obligations to give reasons, provided that such measures do not permit external actors to dictate case outcomes or create indirect pressure incompatible with complete independence. An advisory panel without access to case files and without decision-making power is not a minister. A public impact statement is not an instruction to lower protection. Annual reporting is not control over adjudication. The mandate must be drafted around that distinction and should expressly exclude consultation on individual cases.[53]

[50] Case C-252/21 *Meta Platforms v Bundeskartellamt* EU:C:2023:537; Case C-634/21 *SCHUFA (Scoring)* EU:C:2023:957; Case C-604/22 *IAB Europe* EU:C:2024:214; Case C-446/21 *Schrems v Meta Platforms Ireland* EU:C:2024:834; Case C-621/22 *KNLTB* EU:C:2024:857; Case C-394/23 *Mousse v CNIL and SNCF Connect* EU:C:2025:2; Case C-203/22 *Dun & Bradstreet Austria* (judgment 27 February 2025); Case C-416/23 *Österreichische Datenschutzbehörde v FR* (judgment 9 January 2025). Official case-law database; Official judgment (C-394/23); Official judgment (C-203/22); Official judgment (C-416/23).

[51] Jerry L Mashaw, 'Reasoned Administration: The European Union, the United States, and the Project of Democratic Governance' (2007) 76 *George Washington Law Review* 99; Mark Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13 *European Law Journal* 447; Paul Craig, *EU Administrative Law* (OUP). Bovens DOI.

[52] Case C-518/07 *Commission v Germany* EU:C:2010:125; Case C-614/10 *Commission v Austria* EU:C:2012:631; Case C-288/12 *Commission v Hungary* EU:C:2014:237; GDPR art 52. Official judgment (C-518/07); Official judgment (C-614/10); Official judgment (C-288/12).

[53] Merijn Chamon, *EU Agencies: Legal and Political Limits to the Transformation of the EU Administration* (OUP 2016); Miroslava Scholten and Michiel Luchtman (eds), *Law Enforcement by EU Authorities* (Edward Elgar 2017); Carol Harlow and Richard Rawlings, *Law and Administration* (3rd edn, CUP 2009).

CJEU guardrails for an innovation mandate

The case law supports disciplined justification, not deregulation.

Principle	Key authorities	Implication for the mandate
Fair balance	*Promusicae; Schecke; ASNEF; Google Spain*	Open concepts require a structured balance between rights and interests, not automatic maximal restriction.
Strict necessity and safeguards	*Digital Rights Ireland; Tele2; La Quadrature; Schrems I and II*	Economic or administrative convenience cannot rescue serious interference lacking strict limits, oversight and remedies.
Business freedom is real but bounded	*Sky Österreich; AGET Iraklis; Charter Art 16*	A material burden on lawful activity enters proportionality analysis but never operates as a trump over data rights.
Market-shaping data cases	*Meta Platforms; SCHUFA; IAB Europe; Schrems v Meta; KNLTB; Mousse*	Data-protection interpretation now structures platform economics, scoring, advertising, service design and AI development.
Independence preserved	*Commission v Germany; Austria; Hungary; GDPR Art 52*	Statutory duties and public reasons are permissible; external direction of individual cases is not.
Review of administration	*Technische Universität München; Sytraval; Charter Arts 41 and 47*	Courts review relevant considerations, evidence and reasons without becoming industrial-policy tribunals.

Drafting implication: secondary, evidence-based, reason-giving, rights-preserving and insulated from political or industry direction in individual enforcement.

Figure 3: CJEU jurisprudence supports a mandate built on fair balance, strict necessity, relevance under Article 16, market-shaping awareness, reviewable reasons, and independence safeguards.[54][55][56]

4. Policy and Economic Evidence: The Case for Supervisory Accountability

The policy environment has changed from one in which competitiveness arguments could be dismissed as an industry counter-narrative to one in which the Union's own institutions identify innovation, scale and fragmentation as constitutional and strategic problems. Draghi places weak productivity growth, limited scale-up finance, fragmented markets and the cumulative effect of regulation within a single competitiveness diagnosis. Letta's proposed fifth freedom for research, innovation, knowledge, data and skills similarly treats the circulation of intangible productive resources as an unfinished dimension of the internal market. The Competitiveness Compass, the Startup and Scaleup Strategy, and the AI Continent Action Plan translate these diagnoses into an agenda for capital formation, infrastructure, AI uptake, simplification, and European scale.[57]

That agenda should not be read as a warrant for indiscriminate rollback. Competitiveness is not achieved by replacing one form of uncertainty with another, especially where businesses have invested in existing

[54] Case C-275/06 *Promusicae* EU:C:2008:54; Joined Cases C-92/09 and C-93/09 *Schecke and Eifert* EU:C:2010:662; Joined Cases C-468/10 and C-469/10 *ASNEF and FECEMD* EU:C:2011:777; Case C-131/12 *Google Spain* EU:C:2014:317. Official judgment (C-275/06); Official judgment (joined C-468/10 etc); Official judgment (C-131/12).

[55] Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland* EU:C:2014:238; Joined Cases C-203/15 and C-698/15 *Tele2 Sverige and Watson* EU:C:2016:970; Joined Cases C-511/18, C-512/18 and C-520/18 *La Quadrature du Net* EU:C:2020:791; Case C-362/14 *Schrems I* EU:C:2015:650; Case C-311/18 *Schrems II* EU:C:2020:559. EUR-Lex case law.

[56] Case C-518/07 *Commission v Germany* EU:C:2010:125; Case C-614/10 *Commission v Austria* EU:C:2012:631; Case C-288/12 *Commission v Hungary* EU:C:2014:237; GDPR art 52. Official judgment (C-518/07); Official judgment (C-614/10); Official judgment (C-288/12).

[57] Mario Draghi, *The Future of European Competitiveness* (European Commission, September 2024); Enrico Letta, *Much More Than a Market* (April 2024); Commission, *A Competitiveness Compass for the EU* COM(2025) 30; Commission, *The EU Startup and Scaleup Strategy* COM(2025) 270; Commission, *AI Continent Action Plan* (9 April 2025). Draghi; Letta; Competitiveness Compass.

protections, and citizens have organised expectations around them. A durable reform must distinguish substantive non-regression from administrative improvement. The innovation mandate is directed at the latter: clearer routes, faster resolution of threshold questions, better coordination, evidence-sensitive remedies and public explanation of trade-offs. It makes the existing rulebook more governable rather than assuming that every protective norm is a regulatory error.[58]

The current Omnibus files illustrate the point because they sit on opposite sides of the legislative threshold. The general Digital Omnibus remained before Parliament on 14 July 2026, with the Observatory recording it as awaiting committee decision. The Digital Omnibus on AI had completed the legislative procedure and was awaiting publication in the Official Journal. The first file can still be amended; the second is entering the implementation phase. In both settings, legislative simplification and supervisory accountability are distinct. A revised text will still require guidance, prioritisation, standards, remedies and coordination. Unless those functions are subject to disciplined reason-giving, simplification can merely relocate ambiguity from the statute to the administrative layer.[59]

4.1 What the Academic Evidence Can and Cannot Establish

The empirical literature should be used with considerably more restraint than is common in political debate. Jia, Jin, and Wagman identify negative short-run effects of the GDPR on technology venture investment in European ventures compared with comparison groups. Johnson's review finds a substantial body of evidence on firm-level costs and behavioural change while emphasising identification problems, heterogeneous enforcement and the absence of a perfect counterfactual. Blind, Niebel and Rammer identify changes in product innovation and organisational practice that are more complex than a simple reduction in innovative activity. Goldfarb and Tucker, and Campbell, Goldfarb and Tucker, show why privacy rules can also alter innovation incentives, entry and market structure. The literature, therefore, does not provide a single 'innovation coefficient' for the GDPR. It supplies mechanisms: fixed compliance costs, reduced observability, changed data access, altered trust, reorganisation of product development and different effects across firms with unequal legal and technical capacity.[60]

The literature on privacy and market structure adds a further dimension. Goldfarb and Tucker show how privacy rules can affect innovation incentives, and Campbell, Goldfarb and Tucker explain why compliance costs and restrictions on data use may alter entry and concentration. These effects are not necessarily normatively undesirable: a business model dependent on hidden externalities may deserve to contract. The relevant point is that distribution matters. A rule or supervisory expectation may protect data subjects effectively while also creating fixed costs, information advantages or bilateral-access premiums that favour established firms. An accountable regulator should be able to distinguish the cost of protection from that of an avoidable, concentrated implementation route.[61]

Research on regulator performance reinforces the institutional focus. Buckley, Caulfield and Becker demonstrate the difficulty of evaluating privacy regulators through familiar output measures such as fine totals, case counts or complaint volumes. Those measures say little about deterrence, guidance quality, consistency, timeliness, rights outcomes or the counterfactual behaviour that supervision induced. The innovation mandate should

[58] Commission, *Better Regulation Guidelines* SWD(2021) 305 and Better Regulation Toolbox, as updated; Deirdre Ahern, 'The New Anticipatory Governance Culture for Innovation' (2025 working paper). Commission better-regulation materials; Ahern working paper.

[59] Mario Draghi, *The Future of European Competitiveness* (September 2024); Enrico Letta, *Much More Than a Market* (April 2024); Commission, 'A Competitiveness Compass for the EU' COM(2025) 30; Commission, Digital Omnibus COM(2025) 837 and Digital Omnibus on AI COM(2025) 836. On 14 July 2026, Parliament's Legislative Observatory recorded procedure 2025/0360(COD) as 'Awaiting committee decision'. Procedure 2025/0359(COD) had completed the legislative procedure: Parliament adopted its final first-reading position on 16 June 2026, the Council adopted the act on 29 June, and the final act was signed on 8 July; the file was awaiting publication in the Official Journal. Draghi report; Letta report; General Digital Omnibus procedure; AI Omnibus procedure.

[60] Jian Jia, Ginger Zhe Jin and Liad Wagman, 'The Short-Run Effects of the General Data Protection Regulation on Technology Venture Investment' (2021) 40 *Marketing Science* 661; Garrett A Johnson, 'Economic Research on Privacy Regulation: Lessons from the GDPR and Beyond' (NBER Working Paper 30705, December 2022); Knut Blind, Crispin Niebel and Christian Rammer, 'The Impact of the EU General Data Protection Regulation on Product Innovation' (2024) 31 *Industry and Innovation* 311; Avi Goldfarb and Catherine Tucker, 'Privacy and Innovation' (2012) 12 *Innovation Policy and the Economy* 65; James Campbell, Avi Goldfarb and Catherine Tucker, 'Privacy Regulation and Market Structure' (2015) 24 *Journal of Economics & Management Strategy* 47. Jia et al DOI; Johnson at NBER; Goldfarb and Tucker DOI; Campbell et al DOI.

[61] Goldfarb and Tucker, 'Privacy and Innovation' (2012) 12 *Innovation Policy and the Economy* 65; Campbell, Goldfarb and Tucker, 'Privacy Regulation and Market Structure' (2015) 24 *Journal of Economics & Management Strategy* 47. Goldfarb and Tucker DOI; Campbell et al DOI.

therefore not be measured by the number of products that reach the market. It should be assessed through a balanced scorecard that includes rights protection, clarity, consistency, remedy quality, sandbox learning, stakeholder access and evidence of enabled or redesigned lawful deployment.[62]

The defensible inference is modest but significant. Privacy and AI regulation shape the expected cost, timing and uncertainty of deployment; financing and product strategy respond to those expectations; and the distribution of compliance capacity affects market structure. None of that proves that the GDPR caused Europe's scale-up gap. It does establish that supervisory choices can be economically material and that indifference to their effects is not a neutral position. A regulator need not become an industrial planner. It should be required to explain why a materially burdensome route is necessary when a less burdensome rights-preserving route has been put forward with credible evidence.[63]

4.2 Regulatory Certainty, Capital and Scale

The EIB's work on the scale-up financing gap provides the appropriate macroeconomic context. European firms often raise materially less capital than comparable US firms during the scale-up phase and rely heavily on foreign lead investors. That evidence does not identify data protection as the cause. It shows why uncertainty and delay can have disproportionate effects at a stage when firms are capital-constrained, valuation-sensitive and deciding where to locate technical and regulatory functions. A six-month delay that an incumbent treats as an operating cost may be existential for a venture-funded firm.[64]

Regulatory certainty is not approval certainty. It is a sufficiently stable understanding of the legal test, the required evidence, the decision-maker, the timetable, and the consequences of failure. In digital markets, those variables are often more important than the nominal severity of the rule. A demanding but predictable conformity pathway can be financed. An apparently flexible standard administered through indeterminate expectations, conflicting authorities and open-ended dialogue is more difficult to price. The mandate therefore treats timeliness and clarity as components of accountable protection, not as concessions to industry.[65]

The effect on scale is also internal-market specific. A European firm should not need to build for the most restrictive plausible interpretation of each open provision in every Member State merely because supervisory coordination is slow. Nor should a firm be able to forum-shop among weak authorities. The correct objective is common high protection through convergent, reasoned interpretation. This is why the EDPB's role in consistency, Regulation (EU) 2025/2518, and the July 2026 cross-regulatory cooperation template are central to the paper's design. They demonstrate that coordination is a legal capacity that can be built, measured and improved.[66]

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[62] Gerard Buckley, Tristan Caulfield and Ingolf Becker, 'GDPR and the Indefinable Effectiveness of Privacy Regulators: Can Performance Assessment Be Improved?' (2024) 10 *Journal of Cybersecurity* tyae017. Open-access article.

[63] The inference is institutional rather than monocausal. See Garrett A Johnson, NBER Working Paper 30705; Anu Bradford, *Digital Empires* (OUP 2023); Goldfarb and Tucker (2012) 12 *Innovation Policy and the Economy* 65; Buckley, Caulfield and Becker (2024) 10 *Journal of Cybersecurity* tyae017. Johnson at NBER; Goldfarb and Tucker DOI; Buckley et al DOI.

[64] Caterina Fratto, Marcin Gatti, Maria Kivernyk, Emily Sinnott and Vera Wielen, *The Scale-Up Gap: Financial Market Constraints Holding Back Innovative Firms in the European Union* (EIB, July 2024). EIB report.

[65] Legal certainty is a general principle of Union law and a central concern of the Commission's better-regulation framework. See Commission, *Better Regulation Guidelines* SWD(2021) 305 and the Better Regulation Toolbox, as updated. Commission better-regulation materials.

[66] Regulation (EU) 2025/2518 on additional procedural rules relating to GDPR enforcement; European Data Protection Board, 'Template for Cross-Regulatory Cooperation Agreements' (draft, 7 July 2026). Procedure Regulation; EDPB template.

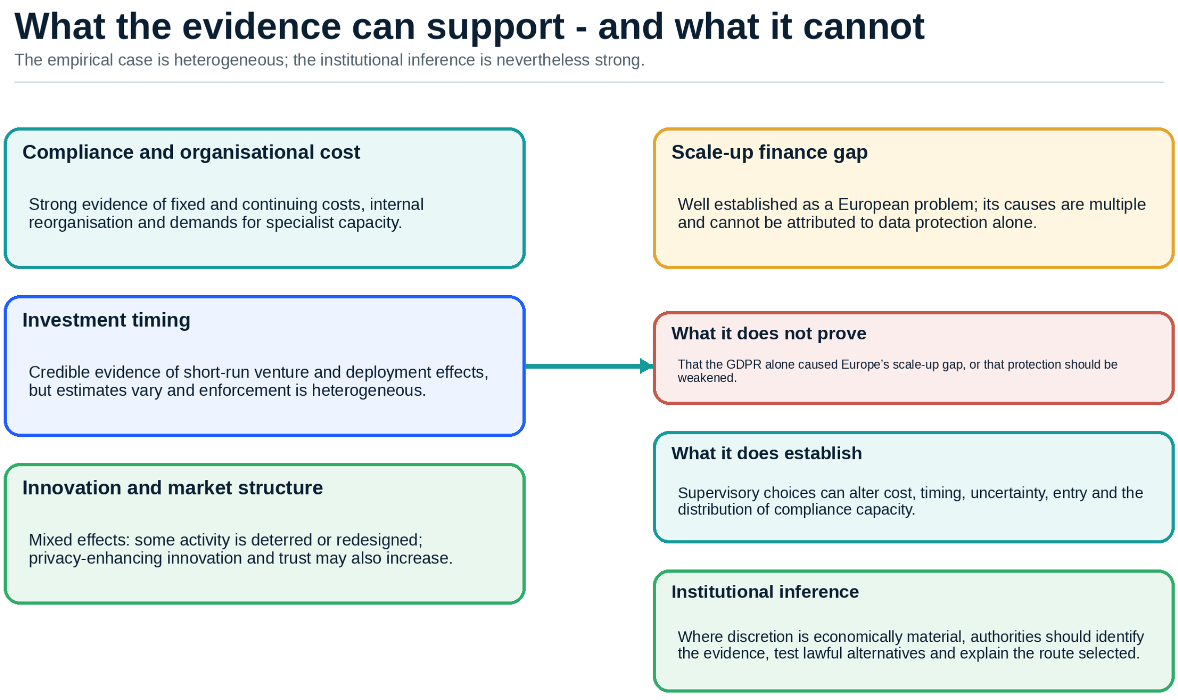

Figure 4: The evidence supports supervisory accountability rather than a monocausal claim that data protection alone produced Europe's scale-up gap.[67][68][69]

4.3 The Data-Use Problem

The most difficult substantive context is the use of data for AI and industrial innovation. Sartor and Lagioia identify the structural tension between data-intensive development and a legal architecture organised around purpose specification, minimisation, transparency, legal basis and enforceable data-subject rights. The EDPB's model-specific analysis and the emerging literature on AI Act governance and regulatory learning show why the interaction cannot be reduced to a binary of permission or prohibition. It assesses provenance, necessity, representativeness, identifiability, explainability, institutional capacity, auditability, and the quality of safeguards across the model lifecycle. The legal question is therefore not whether 'AI needs data' in the abstract, but which data, for which function, under which governance, with which demonstrable protection and with what route for correction when assumptions fail.[70]

That tension should not be resolved by declaring that AI requires more data and, therefore, data protection must yield. More data can reproduce discrimination, increase attack surfaces, frustrate purpose limitation and create systems whose provenance cannot be audited. Nor should the tension be solved through the administrative presumption that the least controversial dataset is always the most lawful. In some contexts, broader or more representative data may reduce bias, improve robustness or permit meaningful validation. The supervisory task

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[67] Jian Jia, Ginger Zhe Jin and Liad Wagman, 'The Short-Run Effects of the General Data Protection Regulation on Technology Venture Investment' (2021) 40 *Marketing Science* 661; Garrett A Johnson, 'Economic Research on Privacy Regulation: Lessons from the GDPR and Beyond' (NBER Working Paper 30705, December 2022); Knut Blind, Crispin Niebel and Christian Rammer, 'The Impact of the EU General Data Protection Regulation on Product Innovation' (2024) 31 *Industry and Innovation* 311; Avi Goldfarb and Catherine Tucker, 'Privacy and Innovation' (2012) 12 *Innovation Policy and the Economy* 65; James Campbell, Avi Goldfarb and Catherine Tucker, 'Privacy Regulation and Market Structure' (2015) 24 *Journal of Economics & Management Strategy* 47. Jia et al DOI; Johnson at NBER; Goldfarb and Tucker DOI; Campbell et al DOI.

[68] Caterina Fratto, Marcin Gatti, Maria Kivernyk, Emily Sinnott and Vera Wielen, *The Scale-Up Gap: Financial Market Constraints Holding Back Innovative Firms in the European Union* (EIB, July 2024). EIB report.

[69] Goldfarb and Tucker, 'Privacy and Innovation' (2012) 12 *Innovation Policy and the Economy* 65; Campbell, Goldfarb and Tucker, 'Privacy Regulation and Market Structure' (2015) 24 *Journal of Economics & Management Strategy* 47. Goldfarb and Tucker DOI; Campbell et al DOI.

[70] Giovanni Sartor and Francesca Lagioia, *The Impact of the General Data Protection Regulation (GDPR) on Artificial Intelligence* (EPRS/STOA 2020); EDPB, Opinion 28/2024 on certain data-protection aspects related to the processing of personal data in the context of AI models (18 December 2024); Claudio Novelli and others, 'A Robust Governance for the AI Act' (2024 working paper); Dave Lewis and others, 'Mapping the Regulatory Learning Space for the EU AI Act' (2025 working paper). EPRS study; EDPB Opinion 28/2024; Novelli et al working paper; Lewis et al working paper.

is to distinguish beneficial, auditable, and necessary data use from excessive, opaque, and opportunistic data accumulation. That is precisely the kind of context in which an evidence-based innovation mandate adds value.[71]

The EDPB's Opinion 28/2024 on AI models illustrates both the need for common reasoning and the limits of abstract guidance. The Opinion addresses anonymity, legitimate interests, and the consequences of unlawful processing in model development, but necessarily leaves it to national authorities to conduct fact-specific assessments. An innovation mandate would require those authorities, when translating the Opinion into general market expectations, to explain how they address model memorisation, identifiability, reasonable expectations, data provenance, technical safeguards, downstream risk, and remediation. The aim is not to force permissiveness. It is to reduce the distance between a principled opinion and an operationally intelligible route.[72]

5. What the Innovation Mandate Should Mean in Law

The phrase "innovation mandate" is dangerous if it remains undefined. It can suggest a general instruction to favour commercial activity, a licence to monetise fundamental rights, or a political mechanism for pressuring independent authorities. Properly designed, it is none of those things. It is a bundle of procedural and institutional duties attached to a general-significance discretion, supported by an express non-regression clause and reviewable under familiar public-law standards.[73]

The first element is a duty to have regard to responsible innovation, legal certainty, proportionate compliance burdens, investment, competitiveness and sustainable economic development. "Have regard to" is important because it structures attention without dictating outcome. A regulator may consider all of those matters and still adopt a strict position. What changes is the evidential and justificatory burden: the regulator must identify the protective objective, describe the material impact, consider credible alternatives and explain why the chosen route remains necessary and proportionate.[74]

The second element is an explicit rights-preservation and non-regression clause. Nothing in the duty may lower the level of protection required by Union law, affect the essence of a fundamental right, authorise a breach, weaken prohibitions, permit unsafe deployment, or reduce protection for children and vulnerable persons. The clause should also state that the duty creates no defence for a controller, provider, deployer, platform or gatekeeper. This prevents the mandate from migrating from a rule governing public administration into a substantive exception for regulated firms.[75]

The third element is a requirement to publish a supervisory impact statement for major positions. The statement should be shorter and more targeted than a legislative impact assessment, but more analytical than a consultation summary. At a minimum, it should identify the legal question; the rights, safety, equality, or consumer risk; the factual evidence and uncertainty; affected groups; innovation, investment, and market-structure effects; less burdensome lawful alternatives; cross-border and cross-regulatory implications; and reasons for accepting or rejecting the principal options. The level of detail should be proportionate to the position's significance.[76]

The fourth element is a public evidence register. Authorities should disclose the studies, technical materials, stakeholder submissions and material assumptions relied on, subject to lawful confidentiality and security limits. Where evidence is contested, the authority should identify the disagreement rather than presenting a policy judgment as an empirical fact. An evidence register would also discipline industry: claims about relocation,

[71] AI Act arts 10, 15 and 26; GDPR arts 5, 25, 32 and 35; EDPB, Opinion 28/2024; Philipp Hacker, Johann Cordes and Janina Rochon, 'Regulating Gatekeeper AI and Data: Transparency, Access, and Fairness under the DMA, the GDPR, and beyond' (2022 working paper). Official AI Act; Official GDPR; EDPB Opinion 28/2024; Hacker, Cordes and Rochon working paper.

[72] EDPB, Opinion 28/2024 on certain data-protection aspects related to the processing of personal data in the context of AI models (18 December 2024). Official EDPB page.

[73] The proposed architecture draws on the public-law distinction between primary statutory purposes and secondary duties of regard, together with reason-giving, proportionality and reporting. Compare Data Protection Act 2018, ss 120A-120D (as inserted by the Data (Use and Access) Act 2025), and Financial Services and Markets Act 2023. ICO framework factsheet; FSMA 2023.

[74] A duty to 'have regard to' requires genuine consideration but does not dictate substantive outcome. Compare Data Protection Act 2018, ss 120A-120D, inserted by s 91 Data (Use and Access) Act 2025. Official ICO factsheet; DUAA 2025.

[75] Charter art 52(1); GDPR arts 5, 6, 9, 22, 44-49 and 52; AI Act arts 5 and 6-27; *Digital Rights Ireland*, *Tele2 Sverige and Watson*, *Schrems I* and *Schrems II*. Official texts and judgments are available on EUR-Lex.

[76] Commission better-regulation practice; Data (Use and Access) Act 2025, ss 92-93 (expert panels and impact assessments for ICO codes); Mashaw, 'Reasoned Administration' (2007) 76 *GW Law Review* 99. ICO factsheet; Commission better regulation.

financing, technical impossibility, or mitigation would need to be supported by evidence in a form capable of scrutiny.[77]

The fifth element is balanced annual accountability. Authorities should report on clarity, consistency, timeliness, cross-border performance, rights outcomes, remedy proportionality, SME support, sandbox throughput, cross-regulatory conflicts and the adoption or rejection of less burdensome rights-preserving alternatives. These metrics should not be converted into crude targets that reward rapid approval or high fine totals. They are diagnostic indicators, supplemented by qualitative case studies and independently reviewed after three years.[78]

5.1 What the Mandate Is - and Is Not

The mandate is	The mandate is not
A secondary procedural duty governing general functions and discretion of general significance.	A rule that innovation, investment or competitiveness trumps privacy, equality, safety, consumer protection or children's rights.
A method for identifying the lawful choice set and testing rights-preserving alternatives.	A new legal basis, exemption, safe harbour or defence to non-compliance.
A reason-giving and evidence discipline for guidance, priorities, sandboxes, consistency work and remedies of general significance.	A requirement that regulators approve commercially attractive technologies or minimise every compliance cost.
A duty compatible with complete independence because it excludes individual-case direction.	A power for ministers, panels, industry or other regulators to influence complaints, investigations, fines or corrective orders.
A way to make Recital 4 GDPR, Article 1 GDPR and Article 1 AI Act operational in administration.	A general cost-benefit test that monetises the essence of fundamental rights.
A balanced accountability regime measuring rights, clarity, consistency and lawful deployment.	A growth league table, fine target or mechanical approval KPI.

5.2 The Trigger: Discretion of General Significance

A duty that applies to every administrative act would become a source of delay and litigation. The trigger should therefore combine form, materiality and prospective effect. It should apply to guidance, recommendations, opinions, best practices, enforcement priorities, sandbox criteria, template assessments, strategic remedies, cross-border consistency positions, cross-regulatory coordination and major public statements that a reasonable market participant would treat as setting a general expectation. It should also apply to decisions not to issue guidance where an identified uncertainty has material cross-border effects.[79]

Materiality should be assessed through a non-exhaustive set of indicators: the novelty or ambiguity of the legal question; the number and diversity of affected actors; likely compliance or transition cost; effect on market entry or cross-border scale; impact on children, workers, consumers or other vulnerable groups; dependence on novel technical evidence; interaction with another Union regime; and the probability that the position will be treated as a de facto benchmark. No single factor should be decisive. The authority should publish a short threshold determination where the trigger is reasonably contestable.[80]

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[77] The proposal draws on transparency, participation and evidence-discipline principles in better regulation and administrative accountability. See Commission, *Better Regulation Toolbox*; Bovens (2007) 13 *European Law Journal* 447; Harlow and Rawlings, *Law and Administration* (3rd edn, CUP 2009). Commission better-regulation materials.

[78] Gerard Buckley, Tristan Caulfield and Ingolf Becker, 'GDPR and the Indefinable Effectiveness of Privacy Regulators: Can Performance Assessment Be Improved?' (2024) 10 *Journal of Cybersecurity* tyae017; Data (Use and Access) Act 2025 framework for ICO strategy and annual performance analysis; Commission Better Regulation Toolbox. Buckley et al DOI; Official ICO factsheet; Commission better-regulation materials.

[79] The materiality-based trigger is modelled on familiar public-law and impact-assessment distinctions between routine administration and measures of general significance. See Commission, *Better Regulation Guidelines* and Toolbox; Paul Craig, *EU Administrative Law* (OUP). Commission better-regulation materials.

[80] The materiality-based trigger is modelled on familiar public-law and impact-assessment distinctions between routine administration and measures of general significance. See Commission, *Better Regulation Guidelines* and Toolbox; Paul Craig, *EU Administrative Law* (OUP). Commission better-regulation materials.

Individual cases require a separate rule. The authority remains bound by proportionality and the applicable legal framework. Still, the innovation mandate should not give government, industry, advisory panels or other external actors a lever over a complaint, investigation, fine or corrective order. A case may yield general significance for learning, and the authority may later publish anonymised guidance or a policy statement subject to the mandate. The decisional outcome itself must remain protected by Article 52 GDPR and the case law on complete independence.[81]

Trigger dimension	Questions for the authority	Indicative consequence
Legal novelty	Does the position resolve an ambiguous, contested or technologically novel question?	Greater need for evidence and alternatives.
Market reach	Will a reasonable market participant treat the position as a general benchmark?	Impact statement presumptively required.
Rights and vulnerability	Does the position materially affect children, workers, consumers or other vulnerable groups?	Enhanced participation and safeguards analysis.
Economic materiality	Is the position likely to affect entry, financing, transition costs or cross-border scale?	Distributional analysis and SME consideration.
Cross-regulatory effect	Does another digital, consumer, competition or sectoral regime materially overlap?	Compatibility note and inter-authority consultation.
Urgency	Is immediate action required to prevent serious and imminent harm?	Interim action permitted; fuller reasons published promptly.

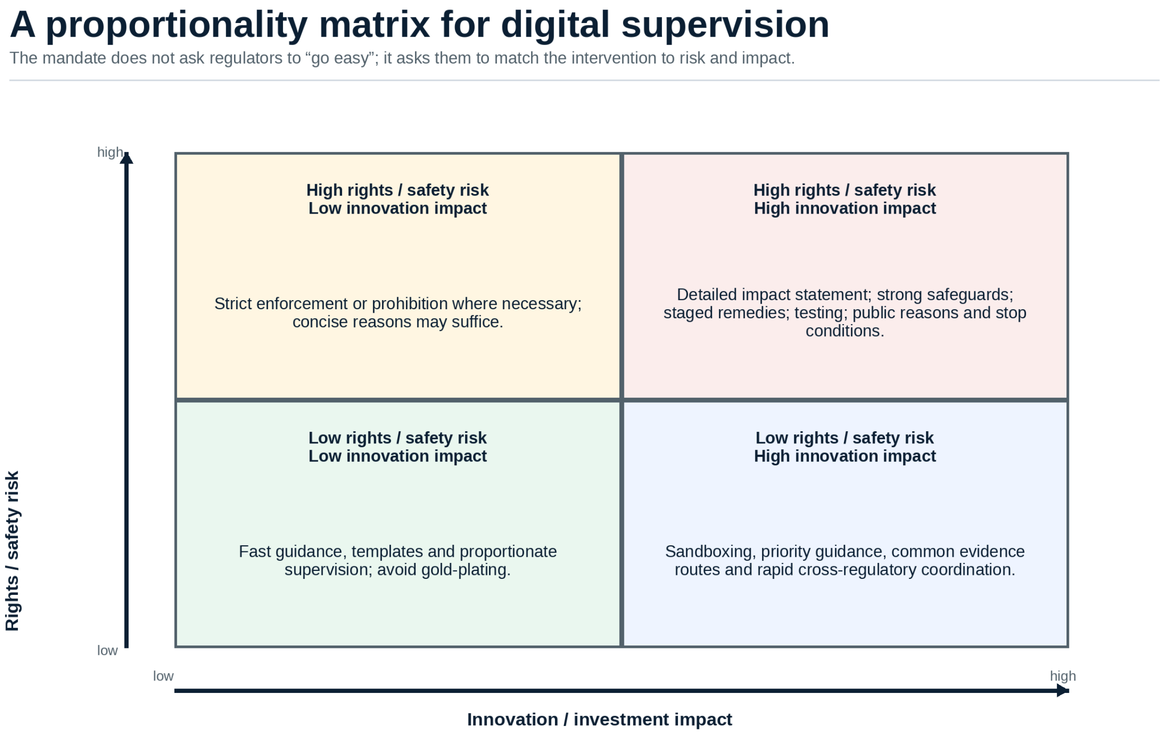

Figure 5: A proportionality matrix helps authorities match guidance, sandboxing, staged remedies or deterrent enforcement to rights risk and innovation impact.[82][83]

[81] Case C-518/07 *Commission v Germany* EU:C:2010:125; Case C-614/10 *Commission v Austria* EU:C:2012:631; Case C-288/12 *Commission v Hungary* EU:C:2014:237; GDPR art 52. Official judgment (C-518/07); Official judgment (C-614/10); Official judgment (C-288/12).

[82] Aharon Barak, *Proportionality: Constitutional Rights and Their Limitations* (CUP 2012); Robert Alexy, *A Theory of Constitutional Rights* (OUP 2002); Takis Tridimas, *The General Principles of EU Law* (OUP); Case C-331/88 *Fedesa* EU:C:1990:391. Official judgment.

[83] Julia Black and Robert Baldwin, 'When Risk-Based Regulation Aims Low: Approaches and Challenges' (2012) 6 *Regulation & Governance* 2; Claudia Quelle (2018) 9 *European Journal of Risk Regulation* 502. Black and Baldwin DOI; Quelle DOI.

5.3 Standard of Review and Legal Consequences

The mandate should be judicially reviewable, but its consequences must be calibrated. A claimant should be able to argue that the authority failed to identify a mandatory consideration, relied on a material factual error, ignored a credible alternative, gave reasons incapable of supporting the conclusion or acted outside the proportionality limits of Union law. A court should not substitute its own industrial policy, reweigh every technical disagreement or require the authority to optimise innovation. The appropriate remedy will often be annulment or the remittal of the general position, rather than a judicial declaration that the regulated activity must be permitted.[84]

To avoid procedural opportunism, the legislation should include a materiality rule. A defect should justify relief only where it could realistically have affected the reasoning, impaired effective participation or frustrated review. Challenges should not automatically suspend the underlying statutory obligation or an urgent protective measure. Authorities should also retain an emergency procedure for imminent and serious harm, with a requirement to publish fuller reasons within a specified period. These safeguards preserve the duty's discipline without turning it into an instrument of procedural obstruction.[85]

6. EU Legislative Package

6.1 GDPR: Amend the Supervisory Architecture, not the Rights Floor

Article 1 is the natural location for a clarifying statement that the Regulation's protection and free-movement objectives must be pursued together in accordance with proportionality. Yet an amendment to Article 1 must be drafted with care. It should not imply that "innovation" is an additional legal basis for processing or that data-subject rights are subject to a free-standing economic exception. Its purpose should be interpretive: to make explicit that the Regulation is to be applied to secure a high level of protection, the free movement of personal data and responsible innovation within the limits of Union law.[86]

Article 5 is more delicate. The principles of lawfulness, fairness, transparency, purpose limitation, minimisation, accuracy, storage limitation, integrity, confidentiality and accountability are doctrinally dense and extensively litigated. Adding a general innovation clause to Article 5 could blur the content of controller obligations and invite arguments that economic interests modify the principles themselves. The better route is to place the operative mandate in the supervisory provisions - a new Article 57a, supported by amendments to Articles 59, 70 and 71 - and, if Article 1 is amended, to state expressly that the clarification creates neither a legal basis nor a limitation on data-subject rights.[87]

The new Article 57a should apply when supervisory authorities perform general functions or exercise discretion of general significance. It should require regard to legal certainty, responsible innovation, proportionate compliance burdens, internal-market consistency, investment and sustainable competitiveness, subject to the rights floor and complete independence. Article 59 annual reports should address the balanced KPI framework. Articles 70 and 71 should impose equivalent duties on the EDPB when issuing guidelines, recommendations, best practices, consistency opinions and positions of general market significance.[88]

Regulation (EU) 2025/2518 provides an important procedural context. The new cross-border rules demonstrate the Union's willingness to specify deadlines, participation, cooperation and dispute-resolution mechanisms in GDPR enforcement. The innovation mandate should not duplicate that regime. It should complement it by requiring general guidance, priority-setting and coordination choices to disclose their effects on legal certainty,

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[84] Charter arts 47 and 52; Case C-269/90 *Technische Universität München* EU:C:1991:438; Case C-367/95 P *Commission v Sytraval* EU:C:1998:154; Paul Craig, *EU Administrative Law* (OUP). Official judgment (C-269/90); Official judgment (C-367/95 P).

[85] The design responds to the classic concern that procedural review can ossify regulation. See Thomas O McGarity, 'Some Thoughts on Deossifying the Rulemaking Process' (1992) 41 *Duke Law Journal* 1385; Commission, *Better Regulation Guidelines*. McGarity; Commission.

[86] GDPR arts 1 and 5; Commission, Proposal for a Regulation as regards simplification of the digital regulatory framework, COM(2025) 837 final; EDPB-EDPS Joint Opinion 02/2026 on the Digital Omnibus proposal. Official GDPR; General Digital Omnibus procedure; EDPB-EDPS documents register.

[87] GDPR arts 1 and 5; Commission, Proposal for a Regulation as regards simplification of the digital regulatory framework, COM(2025) 837 final; EDPB-EDPS Joint Opinion 02/2026 on the Digital Omnibus proposal. Official GDPR; General Digital Omnibus procedure; EDPB-EDPS documents register.

[88] GDPR arts 51, 52, 57, 59, 70 and 71. Official text.

consistency and lawful deployment. The two reforms address different stages of the supervisory process but share a commitment to administratively effective rights protection.[89]

6.2 Model GDPR Drafting

Article 1 - proposed insertion

This Regulation shall be interpreted and applied to ensure a high level of protection of the fundamental rights and freedoms of natural persons in relation to the processing of personal data, to safeguard the free movement of personal data within the Union, and, within the limits of Union law, to support responsible innovation, legal certainty and sustainable economic development in accordance with the principle of proportionality. This paragraph shall neither constitute a legal basis for processing nor limit the rights of data subjects or the obligations of controllers and processors.

New Article 57a - general functions and discretion of general significance

1. When performing general functions or exercising discretion of general significance under this Regulation, supervisory authorities shall have regard to legal certainty, internal-market consistency, responsible innovation, proportionate compliance burdens, investment, competition and sustainable economic development.

2. The duty in paragraph 1 shall apply only within the range of outcomes permitted by Union law. It shall be without prejudice to Articles 7, 8, 21, 24, 47 and 52 of the Charter, the level of protection required by this Regulation, and the complete independence of supervisory authorities under Article 52.

3. The duty shall not create a defence to non-compliance. It shall not permit any person or body to direct an individual complaint, investigation, corrective measure, administrative fine or other supervisory decision.

4. For major guidelines, recommendations, best practices, enforcement priorities, sandbox criteria, template assessments, consistency positions or remedies of general significance, the supervisory authority shall publish a proportionate impact statement identifying the legal issue, relevant risks, evidence, affected groups, material alternatives, cross-border implications and reasons for the selected approach.

Articles 59, 70 and 71 - accountability

Annual reports of supervisory authorities and the European Data Protection Board shall assess legal certainty, consistency, timeliness, rights outcomes, proportionality, stakeholder access, support for smaller organisations, cross-regulatory coordination, and the treatment of less burdensome, rights-preserving alternatives. The Board shall publish an impact statement for guidelines, recommendations, best practices and consistency positions of general market significance.

6.3 AI Act: Apply the Duty across the Supervisory Ecosystem

The AI Act requires tailored drafting because its supervisory structure differs from the GDPR. The relevant duty should cover the AI Office, national competent authorities, and market surveillance authorities. It should apply to guidance, common implementation positions, enforcement priorities, classification practice, sandbox rules, general-purpose AI initiatives, serious-incident expectations, post-market monitoring, corrective-action sequencing and coordination with conformity-assessment and standardisation bodies. The duty should not alter prohibited-practice rules, weaken high-risk obligations or permit providers and deployers to avoid compliance.[90]

The legislation should also create a duty to publish sandbox learning. Article 57 and the following sandbox provisions are intended to support innovation and regulatory learning, but confidential bilateral learning produces unequal access. Subject to trade-secret, security, and personal-data constraints, national authorities and the AI Office should publish recurring issues, accepted evidence methods, common mitigations, and reasons

[89] Regulation (EU) 2025/2518 of the European Parliament and of the Council laying down additional procedural rules relating to the enforcement of Regulation (EU) 2016/679. Parliament's procedure was completed and the final act was published on 12 December 2025. Final act; Legislative history.

[90] AI Act, particularly arts 57-63 and 70-75; Commission, COM(2025) 836. AI Act; Commission proposal.

for rejecting proposed safeguards. This would turn sandboxes from isolated experiments into infrastructure for the internal market.[91]

The Digital Omnibus on AI can no longer be treated as an open legislative vehicle. The final act was signed on 8 July 2026 and, as of 14 July, awaited publication in the Official Journal. Once published, its exact changes to timing, competence and supervisory architecture should be assessed against the mandate proposed here. The immediate route is therefore implementation rather than amendment of the completed file: the AI Office and national authorities should adopt common impact statements, evidence, sandbox learning, and reporting practices within their existing powers, while the legislature should preserve the option of a future targeted amendment if the final institutional allocation leaves a material accountability gap. The duty must attach to supervisory functions, not to any single postponement or simplification measure.[92]

AI Act - proposed insertion

When exercising general functions or discretion of general significance under this Regulation, the AI Office, national competent authorities and market-surveillance authorities shall have regard to responsible innovation, legal certainty, proportionate and timely supervision, investment, competition and the Union's sustainable competitiveness objectives. This duty shall operate only within the range of outcomes permitted by Union law and without prejudice to fundamental rights, equality, health and safety, consumer protection, the protection of children and vulnerable persons, and the obligations imposed by this Regulation. It shall create no defence to non-compliance and no power of external direction over individual supervisory or enforcement decisions.

6.4 DSA, DMA, Data Act and Cross-Regulatory Coherence

The logic of the mandate extends beyond data protection and AI. Under the DSA, choices concerning systemic risk assessment, audits, recommender systems, advertising transparency, researcher access, and mitigation interact with data minimisation, consumer law, and equality. Under the DMA, gatekeeper data-use restrictions, interoperability, access and remedies interact with the GDPR and competition law. The Data Act adds access, sharing, and unfair-terms obligations that may conflict with confidentiality, cybersecurity, and personal data duties. A firm experiences the combined effect, even where each regulator views only its own instrument.[93]

The immediate answer is not to rewrite every digital statute. It is to institutionalise cross-regulatory compatibility. Before finalising a major position with material effects under another regime, the lead authority should consult the relevant bodies and publish a concise compatibility note that identifies overlaps, conflicts, sequencing, and residual divergence. The EDPB's 7 July 2026 draft Template for Cross-Regulatory Cooperation Agreements provides a concrete institutional foothold. It should be developed into interoperable arrangements among data protection, competition, consumer, communications, platform, and AI authorities.[94]

Compatibility does not mean that every authority must reach the same policy preference. Different statutes protect different interests and allocate powers differently. The requirement is that inconsistency be identified, justified and, where possible, reduced before regulated actors are forced to reconcile it privately. Public coordination also reduces the risk of capture by making inter-authority trade-offs visible rather than leaving them to closed bilateral meetings.[95]

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[91] AI Act, arts 57-63; Commission, Draft Implementing Regulation on AI regulatory sandboxes (2 December 2025); Deirdre Ahern, 'Operationalising AI Regulatory Sandboxes under the EU AI Act: The Triple Challenge of Capacity, Coordination and Attractiveness to Providers' (2025 working paper). Official AI Act; Commission AI Act implementation portal; Ahern working paper.

[92] Commission, Proposal for a Regulation amending Regulations (EU) 2024/1689 and (EU) 2018/1139 as regards simplification of the implementation of harmonised rules on artificial intelligence, COM(2025) 836 final, 19 November 2025. By 14 July 2026, procedure 2025/0359(COD) was completed and awaiting publication in the Official Journal: Parliament adopted the final first-reading position on 16 June, the Council adopted the act on 29 June and the final act was signed on 8 July. Commission proposal; Official procedure file.

[93] Philipp Hacker, Johann Cordes and Janina Rochon, 'Regulating Gatekeeper AI and Data' (2022 working paper); Claudio Novelli and others, 'A Robust Governance for the AI Act' (2024 working paper); Dave Lewis and others, 'Mapping the Regulatory Learning Space for the EU AI Act' (2025 working paper); EDPB, Template for Cross-Regulatory Cooperation Agreements (draft, 7 July 2026). Hacker, Cordes and Rochon working paper; Novelli et al working paper; Lewis et al working paper; Official EDPB template.

[94] EDPB, 'Template for Cross-Regulatory Cooperation Agreements' (draft, 7 July 2026). The Board invited feedback from communications, consumer-protection, competition and other regulators during a twelve-week consultation. Official EDPB page.

[95] See Hacker, Cordes and Rochon, 'Regulating Gatekeeper AI and Data' (2022 working paper); Novelli and others, 'A Robust Governance for the AI Act' (2024 working paper); Lewis and others, 'Mapping the Regulatory Learning Space for the EU AI Act' (2025 working paper);

7. Germany: Move First, but Respect the Federal Architecture

Germany has a particular opportunity because its data-protection tradition gives any reform considerable European significance, while its industrial base makes the cost of uncertain data use unusually salient. The central challenge is institutional rather than rhetorical. A new title, a declaration that the regulator should be an "enabler", or a general commitment to data use will not change supervisory behaviour unless the legal mandate, procedures, evidence base and reporting obligations change with it.[96]

Germany’s federal structure requires precision. The BfDI is an independent supreme federal authority with jurisdiction over federal public bodies and specified sectors. The Länder authorities supervise much of the private sector under their respective legal arrangements. The Datenschutzkonferenz coordinates the independent federal and Länder authorities, but it is not itself a single supervisory authority endowed with a general federal statutory mandate. A federal amendment can bind the BfDI; it cannot, by assertion alone, rewrite the legal duties of every Land authority.[97]

7.1 A Two-Level Legislative Model

The first level should be a BDSG amendment applying to the BfDI’s general functions, guidance, European participation and contributions to national coordination. It should contain the secondary duty, rights-preservation clause, independence clause, impact-statement requirement, evidence register and annual Bundestag reporting. The provision should state that consultation with ministries or stakeholders concerns general policy and evidence only and cannot direct supervisory outcomes.[98]

The second level should be a model provision for Länder law or an intergovernmental commitment adopted by the participating authorities. Its purpose would be methodological convergence: common trigger criteria, a shared impact-statement template, a public log of divergent interpretations, compatible KPIs and a procedure for translating DSK resolutions into reasons that identify the evidence and alternatives considered. This respects federal competence while reducing the current risk that coordination produces a common conclusion without a sufficiently transparent account of how it was reached.[99]

The BfDI’s participation in the EDPB and DSK creates a third, European-facing level. German reform should require the BfDI to advocate the same method in consistency work: identify material alternatives, report internal-market effects, disclose cross-regulatory conflicts and explain how the position remains within the rights floor. Germany would then move from criticising fragmented European supervision to supplying an institutional model that could be adopted elsewhere.[100]

7.2 BDSG Model Architecture

Reform element	What Germany should legislate
BfDI statutory duty	Apply the secondary duty to the BfDI’s general functions, guidance, European participation and national coordination, subject to rights and complete independence.
Rights and non-regression clause	No legal basis, defence or reduction in protection; no effect on the essence of rights, statutory prohibitions or mandatory safeguards.
Individual-case firewall	No ministry, panel, parliamentary committee, industry body, or other authority may direct a complaint, investigation, fine, corrective measure, or any other case outcome.

EDPB, Template for Cross-Regulatory Cooperation Agreements (2026). Hacker, Cordes and Rochon working paper; Novelli et al working paper; Lewis et al working paper; Official EDPB template.

[96] Bundesdatenschutzgesetz; official BfDI and Datenschutzkonferenz materials; Giovanni Sartor and Francesca Lagioia, *The Impact of the GDPR on Artificial Intelligence* (EPRS/STOA 2020). Official BDSG; BfDI; Datenschutzkonferenz; EPRS study.

[97] GDPR, arts 51-52; Bundesdatenschutzgesetz (BDSG), especially Parts 3 and 4; official sites of the BfDI and Datenschutzkonferenz. The DSK is a coordination conference of independent federal and Länder authorities rather than a single federal supervisory authority. BDSG; BfDI; DSK.

[98] Bundesdatenschutzgesetz, especially ss 8-16 and 40; GDPR arts 51-59. BDSG; GDPR.

[99] GDPR, arts 51-52; Bundesdatenschutzgesetz (BDSG), especially Parts 3 and 4; official sites of the BfDI and Datenschutzkonferenz. The DSK is a coordination conference of independent federal and Länder authorities rather than a single federal supervisory authority. BDSG; BfDI; DSK.

[100] GDPR arts 63-76 establish consistency and EDPB functions. The BfDI participates in the Board and in national coordination. GDPR; BfDI Europe and international.

Reform element	What Germany should legislate
Impact statement and evidence register.	Require a proportionate public statement and evidential record for major BfDI positions of general significance.
Bundestag reporting	Report on rights outcomes, legal certainty, response times, European and federal consistency, SME support, cross-regulatory conflicts and alternatives considered.
Länder model provision	Invite parallel provisions or a common inter-authority framework; a federal BDSG amendment cannot by itself rewrite the duties of every Land authority.
DSK methodology	Use common trigger criteria, templates, evidence standards and a public divergence log, while preserving the competence and independence of each authority.
Advisory challenge	Create a balanced, public, non-case-specific panel with conflict rules, published evidence and authority responses.

7.3 Growth and Innovation Advisory Panel

A German Growth and Innovation Advisory Panel could improve the BfDI's evidential capacity, but only with stronger safeguards than those of a conventional industry forum. Its purpose should be to provide non-case-specific evidence about technical change, implementation barriers, investment decision-making, SME constraints, auditable safeguards and vulnerable-group effects. It should have no decision-making power, no access to confidential case files and no ability to require the BfDI to open, close or resolve a case in a particular way.[101]

Membership should include firms of different sizes, investors, technical experts, trade unions, civil society organisations, consumer groups, equality and children's rights experts, academics, and representatives able to speak for affected communities. Agendas, evidence submissions, conflicts and minutes should be public. The BfDI should publish a short response identifying which recommendations were accepted, rejected or deferred. A panel designed in this way is not a channel for privileged access; it is a mechanism for exposing competing evidence to public scrutiny.[102]

8. The UK Comparator: Useful Because It Is Limited

The UK model should not be transplanted wholesale into Union law, not least because the constitutional setting, institutional structure and post-Brexit regulatory objectives differ. It is nevertheless useful as a proof of institutional possibility. The Data (Use and Access) Act 2025 creates a principal objective for the Information Commissioner centred on appropriate protection and public trust, together with subordinate duties to consider the desirability of promoting innovation and competition, children's specific protection and other public interests. It also requires strategy, annual reporting, expert panels for codes and published impact assessments.[103]

The UK design confirms two propositions relevant to the European debate. First, a data regulator can retain a primary protection objective while being required to consider innovation and competition. Second, the duty is meaningful only when accompanied by procedure: public strategy, panels, impact assessment and performance reporting. The comparison, therefore, supports the architecture of a secondary duty but also warns against symbolic drafting that merely inserts the word "innovation" without changing how general supervisory choices are made.[104]

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[101] Compare the expert-panel and impact-assessment requirements introduced for ICO statutory codes by ss 92-93 Data (Use and Access) Act 2025, and the UK financial-services practitioner-panel tradition. ICO factsheet; FCA panels.

[102] George J Stigler, 'The Theory of Economic Regulation' (1971) 2 *Bell Journal of Economics and Management Science* 3; Daniel Carpenter and David A Moss (eds), *Preventing Regulatory Capture* (CUP 2014); Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation* (OUP). Carpenter and Moss publisher page.

[103] Data (Use and Access) Act 2025, especially ss 91-95; Data Protection Act 2018, ss 120A-120D and 139A as amended. The framework creates a principal protection/public-trust objective, subordinate innovation and competition considerations, expert panels, impact assessments and annual performance analysis. Act; Official factsheet.

[104] Data (Use and Access) Act 2025, especially ss 91-95; Data Protection Act 2018, ss 120A-120D and 139A as amended. The framework creates a principal protection/public-trust objective, subordinate innovation and competition considerations, expert panels, impact assessments and annual performance analysis. Act; Official factsheet.

The financial-services analogy is similarly instructive but limited. The Financial Services and Markets Act 2023 introduced secondary competitiveness and growth objectives for the UK's financial regulators. That model has prompted legitimate concern about pressure on protection and the measurement of success. The lesson for EU digital regulation is not to copy the objectives' breadth, but to separate primary protection from secondary regard, to define the trigger, to preserve individual-case independence and to require balanced reporting that includes protection outcomes as well as economic effects.[105]

9. Implementation: The Machinery that Makes the Mandate Real

9.1 Supervisory Impact Statements

The supervisory impact statement should be the workhorse of the reform. It should accompany major guidance, strategic enforcement positions, sandbox rules, template expectations, consistency opinions and public positions that materially shape a market. The format should be standardised but scalable. A narrow technical update may require two pages; a major EDPB guideline on AI training data, anonymisation or legitimate interests may require a fuller record.[106]

A useful statement should answer ten questions: what legal issue is being resolved; what evidence establishes the problem; which rights, safety, equality or consumer interests are affected; which groups bear the risk; what lawful alternatives were considered; what protection each alternative would achieve; what effects are expected for legal certainty, entry, investment and scale; how SMEs and public-interest actors are affected; how overlapping regimes have been reconciled; and why the selected route is proportionate. Where the evidence is uncertain, the authority should say so and identify review or monitoring conditions.[107]

The statement should record both rejected and accepted industry evidence. A reasoned rejection provides legal certainty and prevents the process from becoming a ritual in which submissions disappear into a consultation summary. The authority should also disclose when a protective position has been narrowed because a safeguard proved technically auditable, and when a proposed safeguard was rejected because it depended on unenforceable promises or unverifiable claims.[108]

9.2 Public Evidence Register and Cross-Regulatory Compatibility Note

The evidence register should contain non-confidential submissions, commissioned research, technical reports, impact data and the authority's material assumptions. Confidential information may be summarised, and security-sensitive material may be withheld, but the authority should identify the nature of the evidence and the reason for non-disclosure. The register allows civil society, firms, researchers and courts to understand the empirical basis of the position and reduces dependence on informal access.[109]

Where another digital regime is materially engaged, the authority should append a cross-regulatory compatibility note. The note should identify the authorities consulted, legal overlaps, sequencing, unresolved conflicts, and the justification for any divergence. The EDPB's 2026 draft cooperation template provides a starting point; the innovation mandate would add public-facing accountability to the inter-authority process.[110]

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[105] Financial Services and Markets Act 2023 introduced secondary competitiveness and growth objectives for the FCA and PRA. Official Act; FCA secondary objective.

[106] Commission better-regulation practice; Data (Use and Access) Act 2025, ss 92-93 (expert panels and impact assessments for ICO codes); Mashaw, 'Reasoned Administration' (2007) 76 *GW Law Review* 99. ICO factsheet; Commission better regulation.

[107] Commission better-regulation practice; Data (Use and Access) Act 2025, ss 92-93 (expert panels and impact assessments for ICO codes); Mashaw, 'Reasoned Administration' (2007) 76 *GW Law Review* 99. ICO factsheet; Commission better regulation.

[108] The proposal draws on transparency, participation and evidence-discipline principles in better regulation and administrative accountability. See Commission, *Better Regulation Toolbox*; Bovens (2007) 13 *European Law Journal* 447; Harlow and Rawlings, *Law and Administration* (3rd edn, CUP 2009). Commission better-regulation materials.

[109] The proposal draws on transparency, participation and evidence-discipline principles in better regulation and administrative accountability. See Commission, *Better Regulation Toolbox*; Bovens (2007) 13 *European Law Journal* 447; Harlow and Rawlings, *Law and Administration* (3rd edn, CUP 2009). Commission better-regulation materials.

[110] EDPB, 'Template for Cross-Regulatory Cooperation Agreements' (draft, 7 July 2026). The Board invited feedback from communications, consumer-protection, competition and other regulators during a twelve-week consultation. Official EDPB page.

9.3 KPIs that Matter

KPI category	What should be measured
Rights protection	Complaints, harms, discrimination and vulnerable-group effects; redress; stop conditions; monitoring; enforcement and prevention outcomes.
Legal certainty	Time from identified uncertainty to public guidance; clarity testing; number of major positions with impact statements; issues resolved through templates or common evidence routes.
Consistency	Divergent national interpretations identified and resolved; duration of cross-border cases; EDPB outputs; cross-regulatory conflicts mapped and addressed.
Proportionality	Examples of less burdensome rights-preserving alternatives adopted or rejected; staged remedies; tailoring to risk; reasons for prohibition.
Innovation and scale	Sandbox applications and outcomes; SME and public-interest support; evidence of delayed, enabled or redesigned lawful deployment; transition costs.
Service and capacity	Response times; stakeholder access; technical expertise; multilingual guidance; quality-of-evidence registers; satisfaction measures with safeguards against gaming.

KPIs should be diagnostic rather than punitive. A target that rewards faster case closure may encourage superficial investigation; a target based on fines may reward visibility rather than protection; and a target based on sandbox admissions may encourage authorities to accept unsuitable projects. Each quantitative measure should therefore be paired with a qualitative account of outcomes, affected groups, learning and unintended effects. Independent evaluation should compare authorities' methods rather than construct a crude league table.[111]

9.4 Industry Evidence Compact

The mandate should impose discipline on both industry and regulators. A firm seeking innovation-sensitive supervision should identify the exact legal uncertainty or supervisory barrier, the lawful activity that an alternative would enable, the affected data subjects or users, the rights and safety risks, the technical and organisational mitigation stack, audit evidence, the expected investment or deployment effect, and the narrower route sought. A submission that cannot distinguish necessary protection from avoidable friction should carry little weight.[112]

Investors and trade associations have a distinct evidential role. They can aggregate anonymised information on abandoned projects, delayed financing, relocation decisions, duplicated assessments, inconsistent Member State interpretations and regulator response times. That evidence should be designed to permit causal caution. A relocation decision may reflect tax, talent, procurement, capital, and regulatory considerations. The value lies in identifying recurring supervisory mechanisms and testing whether a different lawful route would have changed the decision.[113]

Civil society and affected groups must be able to submit evidence on harms, discrimination, chilling effects, inaccessible redress, labour impacts, children's interests and the practical enforceability of proposed safeguards. The mandate is not balanced merely because industry evidence is heard. It is balanced when the authority has

[111] Gerard Buckley, Tristan Caulfield and Ingolf Becker, 'GDPR and the Indefinable Effectiveness of Privacy Regulators: Can Performance Assessment Be Improved?' (2024) 10 *Journal of Cybersecurity* tyae017. Open-access article.

[112] The compact draws on evidence-based regulation and responsive-regulation approaches: Ayres and Braithwaite, *Responsive Regulation* (OUP 1992); Baldwin and Black, 'Really Responsive Regulation' (2008) 71 *Modern Law Review* 59; Commission, *Better Regulation Toolbox*. Commission.

[113] Jian Jia, Ginger Zhe Jin and Liad Wagman, 'The Short-Run Effects of the General Data Protection Regulation on Technology Venture Investment' (2021) 40 *Marketing Science* 661; Garrett A Johnson, 'Economic Research on Privacy Regulation: Lessons from the GDPR and Beyond' (NBER Working Paper 30705, December 2022); Knut Blind, Crispin Niebel and Christian Rammer, 'The Impact of the EU General Data Protection Regulation on Product Innovation' (2024) 31 *Industry and Innovation* 311; Avi Goldfarb and Catherine Tucker, 'Privacy and Innovation' (2012) 12 *Innovation Policy and the Economy* 65; James Campbell, Avi Goldfarb and Catherine Tucker, 'Privacy Regulation and Market Structure' (2015) 24 *Journal of Economics & Management Strategy* 47. Jia et al DOI; Johnson at NBER; Goldfarb and Tucker DOI; Campbell et al DOI.

an organised record of both the benefits claimed for innovation and the risks borne by those who may not participate in the market transaction.[114]

9.5 Independent Review and an Administrative-Burden Ceiling

The regime should be reviewed after three years by an independent body with expertise in administrative law, fundamental rights, economics and technology. The review should assess whether the duty improved reasons, consistency and lawful deployment; whether it generated litigation or delay; whether advisory arrangements produced capture; and whether KPIs distorted behaviour. It should recommend amendment, continuation or repeal of particular mechanisms rather than assume the mandate's permanence.[115]

An administrative-burden ceiling should require the Commission and national legislators to keep the process proportionate. Impact statements should be mandatory only above the materiality threshold; templates should reuse evidence already gathered; authorities should be able to issue joint statements; and urgent protective action should remain available. The mandate is justified only if it reduces the larger hidden bureaucracy of uncertainty, duplication and opaque expectation rather than adding a new layer of ceremonial paperwork.[116]

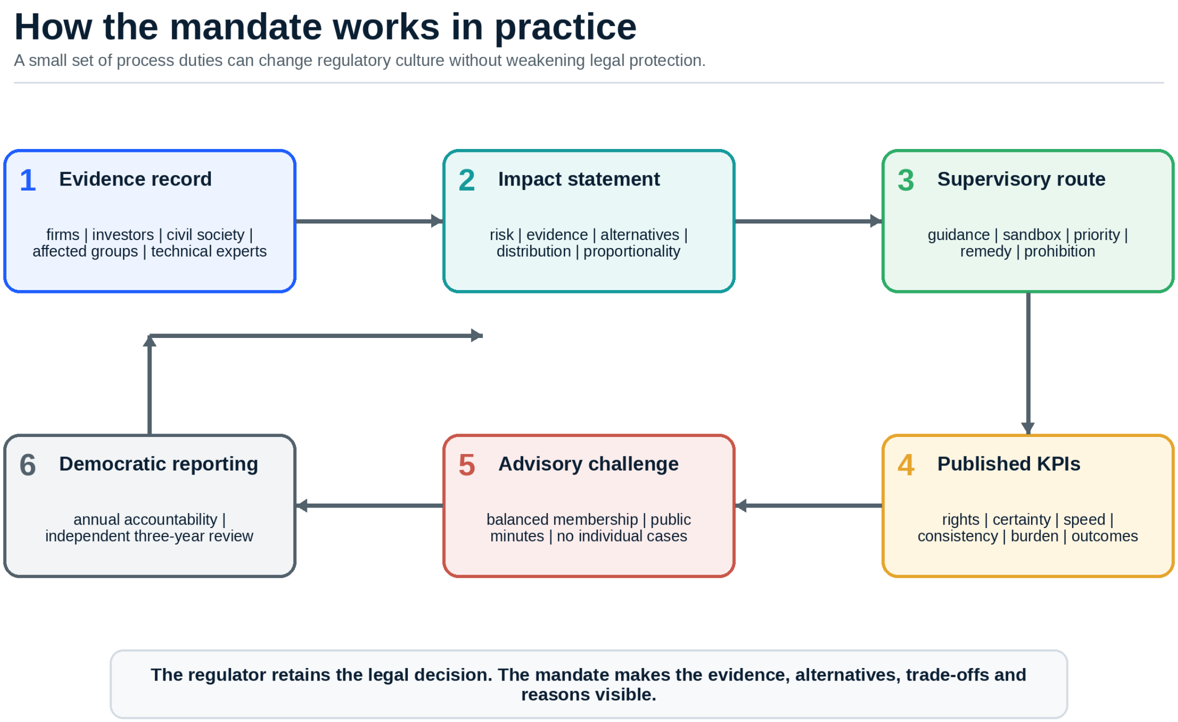

Figure 6: The mandate changes behaviour through evidence, impact statements, supervisory choice, KPIs, advisory challenge, democratic reporting and independent review.[117][118][119]

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[114] Bovens (2007) 13 *European Law Journal* 447; Sabel and Zeitlin (eds), *Experimentalist Governance in the European Union* (OUP 2010); Aarhus-style participation principles offer a broader analogy, while Charter arts 41 and 47 provide the EU administrative-law frame. Charter.

[115] Independent post-implementation review is standard better-regulation practice. See Commission, *Better Regulation Guidelines* and Better Regulation Toolbox; Deirdre Ahern, 'The New Anticipatory Governance Culture for Innovation' (2025 working paper). Commission better-regulation materials; Ahern working paper.

[116] The design responds to the classic concern that procedural review can ossify regulation. See Thomas O McGarity, 'Some Thoughts on Deossifying the Rulemaking Process' (1992) 41 *Duke Law Journal* 1385; Commission, *Better Regulation Guidelines*. McGarity; Commission.

[117] Mark Bovens, 'Analysing and Assessing Accountability' (2007) 13 *European Law Journal* 447; Jerry L Mashaw, 'Reasoned Administration' (2007) 76 *George Washington Law Review* 99; Carol Harlow and Richard Rawlings, *Law and Administration* (3rd edn, CUP 2009); Charles F Sabel and Jonathan Zeitlin (eds), *Experimentalist Governance in the European Union* (OUP 2010). Bovens DOI.

[118] Commission better-regulation practice; Data (Use and Access) Act 2025, ss 92-93 (expert panels and impact assessments for ICO codes); Mashaw, 'Reasoned Administration' (2007) 76 *GW Law Review* 99. ICO factsheet; Commission better regulation.

[119] Independent post-implementation review is standard better-regulation practice. See Commission, *Better Regulation Guidelines* and Better Regulation Toolbox; Deirdre Ahern, 'The New Anticipatory Governance Culture for Innovation' (2025 working paper). Commission better-regulation materials; Ahern working paper.

10. The Hard Objections, Answered

10.1 "This dilutes fundamental rights"

It would, if drafted as a substantive instruction to trade rights against growth. That is why the duty must be secondary, confined to the lawful choice set and accompanied by a rights-preservation clause. A regulator cannot invoke competitiveness to avoid a valid legal basis, weaken data minimisation, authorise a prohibited AI practice, permit unsafe deployment, reduce protection for children or accept a transfer framework lacking adequate safeguards. Where Union law fixes the floor, the mandate has no deregulatory work to do.[120]

The stronger response is that a disciplined mandate can improve the protection of rights. It forces the authority to distinguish serious, evidence-based risk from administrative discomfort; to ask whether a safeguard actually reduces harm; to identify vulnerable-group effects; and to explain both permissive and restrictive positions. A tailored remedy, supported by monitoring and stop conditions, may better protect rights than an unenforced blanket rule. Conversely, a proposed mitigation may prove illusory once its auditability is tested. The mandate makes both conclusions more transparent.[121]

10.2 "This compromises DPA independence"

It would if government or industry could direct individual decisions. They cannot. The duty should expressly preserve final supervisory decision-making and exclude case-specific consultation, instructions and access to confidential files. The independence cases prohibit external influence over supervisory tasks; they do not require authorities to be free from statutory purposes, general procedures, reporting duties or judicially reviewable obligations to give reasons.[122]

The distinction is familiar across administrative law. Independence protects impartial and autonomous judgment. Accountability requires the institution to exercise that judgment within a statutory framework and to explain it. The mandate belongs to the latter category. Indeed, public reasons and transparent evidence can protect independence by making it more difficult for informal political or commercial pressure to operate invisibly.[123]

10.3 "This invites capture"

Capture is a genuine risk, particularly in technically complex markets where regulated firms possess information the authority needs. The answer is institutional design: balanced membership, open calls for evidence, public submissions, conflict declarations, published minutes, reasoned responses and absolute exclusion of individual cases. Advisory panels should be one source of evidence among several, not a privileged route to the decision-maker.[124]

A public evidence process may reduce capture compared with the status quo. Sophisticated incumbents already possess the resources to obtain private meetings, commission studies and translate technical complexity into regulatory influence. Smaller firms, consumers and civil society often lack equivalent access. Requiring evidence and reasons to be placed on a public record makes those asymmetries more visible and allows competing expertise to challenge them.[125]

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[120] Charter art 52(1); GDPR arts 5, 6, 9, 22, 44-49 and 52; AI Act arts 5 and 6-27; *Digital Rights Ireland*, *Tele2 Sverige and Watson*, *Schrems I* and *Schrems II*. Official texts and judgments are available on EUR-Lex.

[121] Julia Black and Robert Baldwin, 'When Risk-Based Regulation Aims Low: Approaches and Challenges' (2012) 6 *Regulation & Governance* 2; Claudia Quelle (2018) 9 *European Journal of Risk Regulation* 502. Black and Baldwin DOI; Quelle DOI.

[122] Case C-518/07 *Commission v Germany* EU:C:2010:125; Case C-614/10 *Commission v Austria* EU:C:2012:631; Case C-288/12 *Commission v Hungary* EU:C:2014:237; GDPR art 52. Official judgment (C-518/07); Official judgment (C-614/10); Official judgment (C-288/12).

[123] Merijn Chamon, *EU Agencies: Legal and Political Limits to the Transformation of the EU Administration* (OUP 2016); Miroslava Scholten and Michiel Luchtman (eds), *Law Enforcement by EU Authorities* (Edward Elgar 2017); Carol Harlow and Richard Rawlings, *Law and Administration* (3rd edn, CUP 2009).

[124] George J Stigler, 'The Theory of Economic Regulation' (1971) 2 *Bell Journal of Economics and Management Science* 3; Daniel Carpenter and David A Moss (eds), *Preventing Regulatory Capture* (CUP 2014); Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation* (OUP). Carpenter and Moss publisher page.

[125] Bovens (2007) 13 *European Law Journal* 447; Sabel and Zeitlin (eds), *Experimentalist Governance in the European Union* (OUP 2010); Aarhus-style participation principles offer a broader analogy, while Charter arts 41 and 47 provide the EU administrative-law frame. Charter.

10.4 "This adds bureaucracy"

A badly designed duty would. A properly designed duty targets major positions, uses standard templates, permits joint statements, reuses consultation evidence and exempts routine administration. The administrative cost must be compared with the status quo: duplicated DPIAs, repeated legal opinions, inconsistent national advice, delayed launches, conservative design, and avoidable disputes stemming from unclear expectations. A modest front-end reason-giving duty may reduce a much larger volume of hidden private and public bureaucracy.[126]

The materiality threshold and three-year review are essential. If the duty begins to produce lengthy statements with no effect on decisions, or if litigation focuses on minor omissions, the mechanism should be narrowed. The mandate is a means of improving supervisory quality, not a constitutional fetish for documentation.[127]

10.5 "Innovation is too vague to be a legal duty"

The word is vague if left alone. The statute should define the relevant considerations: responsible innovation, legal certainty, proportionate compliance burdens, entry and scale, investment, competition, sustainable economic development and the ability to deploy lawful technology. The authority would not be required to determine whether a product is "innovative" in the abstract. It would be necessary to present concrete evidence of how its discretionary choice affects the development or deployment of lawful activity.[128]

This is why a duty of regard is preferable to an optimisation objective. It structures the inquiry without dictating the answer. A regulator can consider investment and still prohibit a practice; consider competition and still impose a demanding remedy; consider SME effects and still apply the same substantive standard. What it cannot do is treat the market-shaping consequences of a general choice as categorically irrelevant.[129]

10.6 "This will create litigation and procedural ossification"

Any reviewable duty can be litigated, and the risk should not be minimised. The answer is to define the trigger, mandatory factors, materiality rule and remedy. Courts should review the legality, evidence, reasons, and proportionality without substituting their own assessment of industrial policy. Minor defects should not invalidate a position unless they could have affected the result or frustrated effective participation. Urgent action should remain available, subject to subsequent reasons.[130]

The relevant comparison is again the status quo. Opaque guidance can lead to litigation at the enforcement stage, when the stakes are higher, and the factual record is less suited to general policy. Earlier, structured explanation may resolve disagreement before firms commit to a design or authority commits to a rigid position. The mandate may shift contestation forward rather than increase it.[131]

10.7 "Regulators lack the economic and technical capacity"

Many do. That is a capacity argument, not for ignoring consequences. Authorities will need economists, engineers, social scientists, accessibility expertise, sectoral knowledge, and lawyers. Joint expert pools, secondments subject to conflict rules, common Commission support and shared technical facilities can reduce duplication. The Support Pool of Experts and AI Office structures provide partial models, but capacity must be distributed to national authorities and made available to smaller DPAs.[132]

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[126] Commission, *Better Regulation Guidelines* SWD(2021) 305 and Better Regulation Toolbox, as updated; Deirdre Ahern, 'The New Anticipatory Governance Culture for Innovation' (2025 working paper). Commission better-regulation materials; Ahern working paper.

[127] The design responds to the classic concern that procedural review can ossify regulation. See Thomas O McGarity, 'Some Thoughts on Deossifying the Rulemaking Process' (1992) 41 *Duke Law Journal* 1385; Commission, *Better Regulation Guidelines*. McGarity; Commission.

[128] A duty to 'have regard to' requires genuine consideration but does not dictate substantive outcome. Compare Data Protection Act 2018, ss 120A-120D, inserted by s 91 Data (Use and Access) Act 2025. Official ICO factsheet; DUAA 2025.

[129] The proposed architecture draws on the public-law distinction between primary statutory purposes and secondary duties of regard, together with reason-giving, proportionality and reporting. Compare Data Protection Act 2018, ss 120A-120D (as inserted by the Data (Use and Access) Act 2025), and Financial Services and Markets Act 2023. ICO framework factsheet; FSMA 2023.

[130] The design responds to the classic concern that procedural review can ossify regulation. See Thomas O McGarity, 'Some Thoughts on Deossifying the Rulemaking Process' (1992) 41 *Duke Law Journal* 1385; Commission, *Better Regulation Guidelines*. McGarity; Commission.

[131] On the practical and legal effects of EU soft law, see Linda Senden, *Soft Law in European Community Law* (Hart 2004); Mariolina Eliantonio and others (eds), *EU Soft Law in the Member States* (Hart 2021); Paul Craig, *EU Administrative Law* (OUP).

[132] EDPB Support Pool of Experts; AI Act provisions on the AI Office, the scientific panel and expert support; Claudio Novelli and others, 'A Robust Governance for the AI Act' (2024 working paper). EDPB Support Pool of Experts; European AI Office; Novelli et al working paper.

The mandate should not require every authority to produce a bespoke macroeconomic model. It requires a proportionate account of material effects, based on available evidence, with the ability to commission or share expertise where the issue warrants it. An authority that lacks evidence should identify the uncertainty and adopt monitoring or review conditions rather than convert uncertainty automatically into either permission or prohibition.[133]

11. Drafting Annex: Model Legislative Architecture

11.1 GDPR Amendments

Provision	Recommended amendment
Article 1	Add a rule of interpretation recognising high rights protection, free movement, responsible innovation and legal certainty; state expressly that it creates no legal basis or limitation on data-subject rights.
New Article 57a	Create the secondary duty for general functions and discretion of general significance, with rights, independence and non-regression safeguards.
Article 57	Add practical guidance, accessible templates, stakeholder engagement, evidence registers, SME support and identification of rights-preserving alternatives to the authority's tasks.
Article 59	Require balanced annual reporting on rights, certainty, consistency, timeliness, proportionality, cross-regulatory coordination and innovation impact.
Articles 60-66	Coordinate the mandate with Regulation (EU) 2025/2518 and require general procedural learning to be translated into public guidance where appropriate.
Articles 70-71	Mirror the duty for the EDPB and require impact statements for guidelines, recommendations, best practices and consistency positions of general market significance.
Review clause	Require independent evaluation after three years, including litigation, capture, administrative burden and effects on protection and lawful deployment.

11.2 AI Act Amendments

Provision/function	Recommended amendment
Authorities and market surveillance	Apply the duty to the AI Office, national competent authorities and market-surveillance authorities for general functions and discretion of general significance.
Guidance and classification	Require evidence, alternatives, affected-group and proportionality analysis for major classification and implementation positions.
Sandboxes	Require publication of generalisable learning, accepted evidence methods and rejected safeguards, subject to confidentiality and security.
Corrective action	Permit staged remedies where they secure equivalent protection; require reasons where only prohibition or immediate withdrawal is adequate.
Cross-regulatory coordination	Require compatibility notes for material GDPR, DSA, DMA, consumer, equality, product-safety and sectoral overlaps.
Reporting and review	Report on rights, safety, clarity, standards readiness, sandbox throughput, consistency, SME access and lawful deployment; review after three years.

11.3 German BDSG and Länder Architecture

Model BDSG duty for the BfDI

When exercising general functions, participating in European or national coordination, or issuing guidelines, recommendations, opinions or positions of general significance, the Federal Commissioner shall have regard to

[133] On adaptive and experimental governance under uncertainty, see Sabel and Zeitlin (eds), *Experimentalist Governance in the European Union* (OUP 2010); Cary Coglianese and David Lehr, 'Regulating by Robot' (2017) 105 *Georgetown Law Journal* 1147. Coglianese and Lehr.

responsible data use, legal certainty, proportionate compliance burdens, innovation, investment, competition and the sustainable competitiveness of Germany and the Union. This duty shall apply only within the range of outcomes permitted by Union law and without prejudice to the protection of personal data, the complete independence of the Federal Commissioner, and the level of protection required by the GDPR, the Charter and German constitutional law.

Model independence and non-regression clause

The duty creates no legal basis for processing, no defence to non-compliance, and no power for a ministry, parliamentary body, advisory panel, industry body, or other person to direct or influence the outcome of an individual complaint, investigation, corrective measure, fine, or other supervisory decision. Nothing in the duty lowers the level of protection required by Union or German law.

Model accountability clause

For positions of general significance, the Federal Commissioner shall publish a proportionate supervisory impact statement and maintain a public evidence register. The annual report shall assess legal certainty, timeliness, cross-border and federal consistency, rights outcomes, proportionality, SME support, cross-regulatory cooperation and the treatment of less burdensome rights-preserving alternatives.

Model Länder coordination provision

The Federation shall invite the Länder and the independent supervisory authorities, through the Datenschutzkonferenz or another lawful coordination arrangement, to adopt common trigger criteria, impact-statement templates, evidence standards, reporting indicators and a public register of divergent interpretations. The arrangement shall preserve the statutory competence and independence of each participating authority.

11.4 Minimum Content of a Supervisory Impact Statement

Required element	Minimum content
1. Legal issue	Provision, ambiguity, scope of discretion and reason the position is of general significance.
2. Protective objective	Rights, safety, equality, consumer or market-integrity interest pursued.
3. Evidence	Studies, technical material, case experience, data quality and material uncertainty.
4. Affected groups	Data subjects, users, workers, children, vulnerable groups, firms, public bodies and intermediaries.
5. Options	Principal lawful alternatives, including no action, guidance, sandboxing, staged remedy, monitoring and prohibition.
6. Protection analysis	Expected effectiveness, auditability, enforceability, residual risk and stop conditions for each serious option.
7. Distributional effects	Entry, fixed cost, SME and scale-up effects, incumbent advantage and cross-border implications.
8. Cross-regulatory fit	Overlapping obligations, authorities consulted, sequencing and justified residual divergence.
9. Reasons	Why the selected route is suitable, necessary and proportionate; why principal alternatives were accepted or rejected.
10. Review	Monitoring indicators, review date, emergency conditions and route for updating the position.

12. Conclusion: Make Supervisors Show Their Work

Europe should stop presenting innovation and rights as though they occupy separate legal universes. The GDPR, AI Act, DSA, DMA and wider data acquis already make supervision a condition of economic life. The unresolved question is whether the discretionary layer through which those instruments operate will remain implicit, fragmented and democratically under-accounted for, or whether it will be brought within a disciplined framework of evidence, proportionality and public reasons.[134]

The innovation mandate is deliberately narrow because narrowness is its constitutional strength. It does not require Treaty change. It does not weaken the Charter, reduce the GDPR's level of protection, suspend the AI Act, compromise DPA independence or give industry a defence to breach. It does not ask courts to replace expert judgment with economic optimisation. It requires public institutions to account for material choices when the law genuinely leaves them room to choose.[135]

That duty is not hostile to rights. Rights are more secure when protective action is supported by evidence, tailored to risk, attentive to distribution and capable of public justification. Nor is it hostile to regulators. Independent authorities gain legitimacy when they can demonstrate that demanding positions are necessary and that apparently attractive alternatives would not, in practice, protect people. The mandate also imposes discipline on industry, which must identify a lawful alternative, disclose the mitigation and substantiate the economic effect rather than rely on general complaints about bureaucracy.[136]

The constitutional settlement is therefore straightforward: the rights floor is absolute; the lawful choice set is not. Within that choice set, Europe should require its digital supervisors to present evidence, identify alternatives, explain the trade-offs, and justify the route selected. That is not deregulation. It is the constitutionalisation of responsible supervisory discretion.

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[134] GDPR; AI Act; DSA; DMA; Data Act; EDPB 2026 cross-regulatory template; Regulation (EU) 2025/2518. Official texts are available on EUR-Lex and the EDPB website.

[135] The proposed architecture draws on the public-law distinction between primary statutory purposes and secondary duties of regard, together with reason-giving, proportionality and reporting. Compare Data Protection Act 2018, ss 120A-120D (as inserted by the Data (Use and Access) Act 2025), and Financial Services and Markets Act 2023. ICO framework factsheet; FSMA 2023.

[136] Jerry L Mashaw, 'Reasoned Administration: The European Union, the United States, and the Project of Democratic Governance' (2007) 76 *George Washington Law Review* 99; Mark Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13 *European Law Journal* 447; Paul Craig, *EU Administrative Law* (OUP). Bovens DOI.

One-page Legislative Roadmap

Timing	Actor	Action
0-6 months	Commission, Parliament and Council	Consider a bounded duty in the pending general Digital Omnibus; assess the signed AI Omnibus once published and identify the implementation or future amendment route for equivalent accountability.
0-6 months	EDPB and DPAs	Pilot impact statements and public evidence registers for two major guidance projects; finalise the cross-regulatory cooperation template.
0-6 months	Germany	Publish a BDSG proposal for the BfDI and a model Länder / DSK methodology; define advisory-panel safeguards and reporting indicators.
0-12 months	AI Office and national AI authorities	Pilot impact statements and evidence registers; publish common classification and evidence routes; translate sandbox learning into guidance; map GDPR, DSA and product-safety overlaps.
6-12 months	Commission	Create a shared expert support facility for economic, technical, equality, and child rights analysis, accessible to smaller authorities.
12-24 months	Authorities	Publish first balanced reports, compatibility notes and divergence logs; identify legislative and capacity bottlenecks.
36 months	Independent review body	Evaluate protection, reasons, litigation, delay, capture, SME access and lawful deployment; recommend continuation, amendment or repeal of specific mechanisms.