

Recalibrating the EDPB and the EDPS Under a Duty to Cooperate

An Institutional Case for Cooperative Digital Administration

Dr M.R. Leiser

Policy Paper

July 2026

Executive Summary

This paper argues for more substantial reform of the European Data Protection Board (EDPB) and the European Data Protection Supervisor (EDPS) than the Digital Omnibus debate has yet addressed. The problem is not that Europe has too much data protection, or that enforcement has been excessive. It is institutional: bodies at the centre of Union data-protection governance exercise practical authority across an expanding digital rulebook without a correspondingly developed law of cooperative administration.⁰¹

The EDPB shapes the practical law of the GDPR through guidelines, recommendations, consistency opinions and binding Article 65 decisions. Yet it remains an anomalous Union body: legally independent, endowed with legal personality and capable of adopting acts with serious effects, but administratively thin and reliant on a secretariat supplied by the EDPS. The EDPS is not a neutral back-office host. It supervises Union institutions, advises the Union legislature, supplies the EDPB Secretariat and now performs several AI Act functions.²

That settlement may once have been an economy-driven compromise. It is now a structural weakness. A duty to cooperate must operate as a legal mechanism that allocates responsibility, exposes conflicts, protects affected parties and makes material failures of cooperation reviewable. Independence should protect decisional integrity; it should not insulate the exercise of public authority from reasons, process, or scrutiny.³

The reform is now more concrete than it was even a month ago. Regulation (EU) 2025/2518 has harmonised key elements of cross-border GDPR procedures, though it will apply only from 2 April 2027. On 7 July 2026, the EDPB adopted a Template for Cross-Regulatory Cooperation Agreements. In June 2026, a European Parliament study proposed a broader Digital Rulebook Enforcement Toolbox. Each development acknowledges the diagnosis of fragmented enforcement; none yet provides a horizontal, enforceable duty with consequences for serious non-cooperation.⁴

The central claim is deliberately critical: privacy institutions should remain central to EU digital governance only on cooperative, reviewable and institutionally separated terms. The duty should bind the EDPB and EDPS themselves, not merely decorate their relationships with national supervisory authorities, the Commission, Digital Services Coordinators, the AI Office, AI market-surveillance authorities, competition authorities, consumer-protection bodies, cybersecurity authorities and data-governance regulators.⁵

The DPC, WhatsApp and Meta disputes are diagnostic evidence rather than the paper's destination. They show what happens when a one-stop-shop system relies on a nationally framed investigation, late-stage objections, multi-authority bargaining, Article 65 escalation and after-the-fact judicial review. They also caution against reducing the Irish Data Protection Commission (DPC) to a caricature. The DPC built the files, adopted the final decisions and assumed litigation risk, while the distribution of investigative labour, objection power and public visibility remained unequal.^{5F}

¹ Regulation (EU) 2016/679 (General Data Protection Regulation) [2016] OJ L 119/1, arts 63–65, 68, 70 and 75; Charter of Fundamental Rights of the European Union [2012] OJ C 326/391, arts 8, 41 and 47; Giovanni De Gregorio and Anna Vicinanza, 'The Enforcement of European Digital Regulation: Overlaps and Pathways' (2026) *Yearbook of European Law* yeag002 <https://doi.org/10.1093/yel/yeag002> accessed 14 July 2026.

² GDPR, arts 68, 70 and 75; Regulation (EU) 2018/1725 [2018] OJ L 295/39, arts 42 and 52; Regulation (EU) 2024/1689 (Artificial Intelligence Act) [2024] OJ L 2024/1689, arts 43(1), 65(2), 70(9), 74(9) and 100.

³ EDPB and EDPS, *Memorandum of Understanding between the EDPB and the EDPS* (25 May 2018); GDPR, art 75; Lisette Mustert and Cristiana Santos, 'The European Data Protection Board—a (non)consensual and (un)accountable role?' (2025) 59 *Computer Law & Security Review* 106217 <https://doi.org/10.1016/j.clsr.2025.106217> accessed 14 July 2026.

⁴ Regulation (EU) 2025/2518 [2025] OJ L 2025/2518, art 37 (application from 2 April 2027) <https://eur-lex.europa.eu/eli/reg/2025/2518/oj/eng> accessed 14 July 2026; EDPB, *Template for Cross-Regulatory Cooperation Agreements*; McGuire and Schulte-Nölke, *Toolbox for the Enforcement of the Digital Rulebook*.

⁵ Consolidated version of the Treaty on European Union [2016] OJ C 202/13, arts 4(3) and 13(2); Marcus Klamert, *The Principle of Loyalty in EU Law* (OUP 2014). Article 13(2) directly addresses mutual sincere cooperation among Union institutions; Article 4(3) principally governs loyalty between the Union and Member States.

The resulting reform package is pro-rights but anti-drift. It does not call for a mega-regulator or weaken Article 8 of the Charter. It calls for an enforceable duty of inter-regulatory cooperation; a more autonomous EDPB administrative base or hardened statutory separation; audited ring-fencing of the EDPS's functions; procedural discipline for major guidance; transparent rules for information exchange and confidentiality; comparable reporting of action and inaction; and a standing forum that coordinates without collapsing plural regulation into hierarchy.⁶

Central Claim

- The EDPB/EDPS architecture has become simultaneously indispensable and under-governed.
- Cooperation must be legally operational: triggered, recorded, reasoned, time-bounded, rights-respecting and reviewable.
- The EDPB's major guidance and Article 65 work are exercises of public authority whose practical force requires proportionate procedural discipline.
- The EDPS's secretariat, supervisory, advisory, conformity-assessment, market-surveillance and compliance-support roles require auditable separation.
- The 2025 Procedural Regulation and the EDPB's July 2026 cooperation template are important advances, but neither supplies a horizontal, enforceable duty across the digital rulebook.

1. The Mismatch: A Thin Privacy Architecture for a Cross-Regulatory Digital Economy

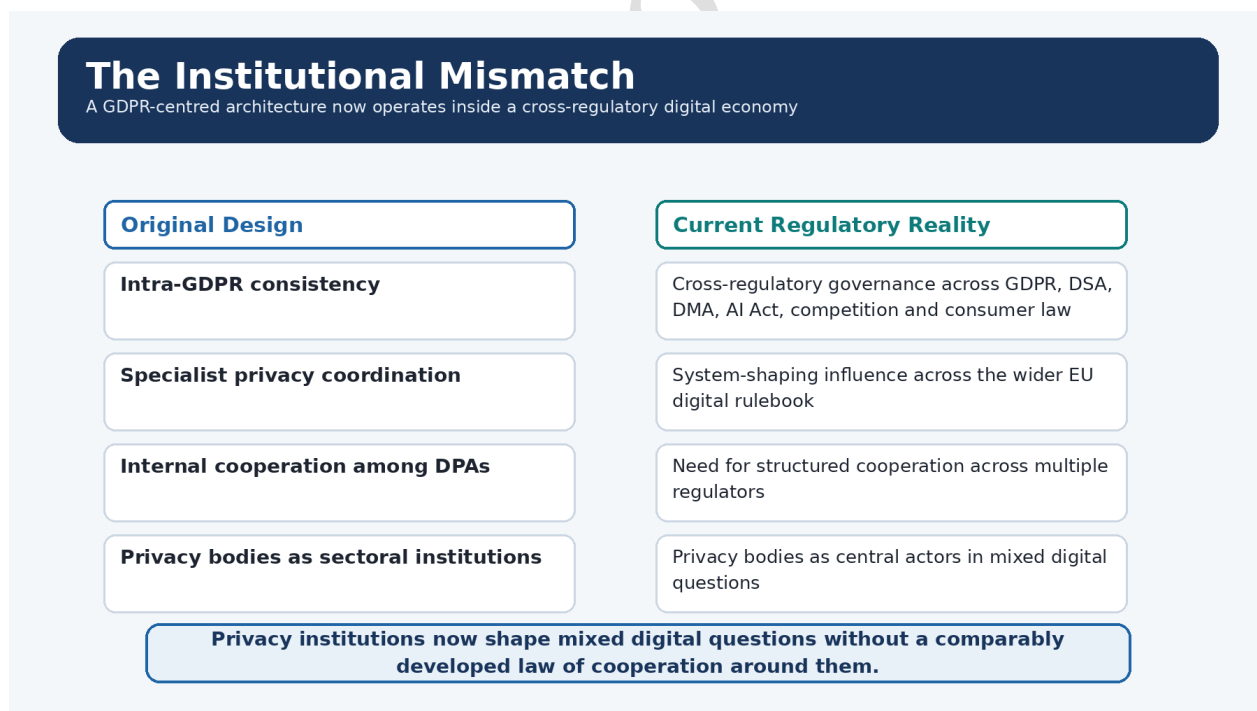


Figure 1. A GDPR-centred architecture now operates inside a cross-regulatory digital economy.

The GDPR was designed around national supervisory authorities, a one-stop shop for cross-border processing, a consistency mechanism and a Board charged with promoting consistent application. That design was

⁶ EDPB, *Template for Cross-Regulatory Cooperation Agreements* (adopted 7 July 2026) https://www.edpb.europa.eu/system/files/2026-07/edpb_template_2026_cross-regulatory_cooperation_agreement_en.pdf accessed 14 July 2026; Mary-Rose McGuire and Hans Schulte-Nölke, *Different Legal Methodologies of Enforcement of Key EU Digital Laws Structures: Toolbox for the Enforcement of the Digital Rulebook* (European Parliament, PE 772.650, June 2026) https://www.europarl.europa.eu/RegData/etudes/STUD/2026/772650/ECTI_STU%282026%29772650_EN.pdf accessed 14 July 2026.

intelligible when data protection could be treated as a field with adjacent edges. It is inadequate where the same platform practice, AI system or data-sharing arrangement can simultaneously engage the GDPR, DSA, DMA, AI Act, Data Act, consumer law, competition law, cybersecurity law and sectoral safety rules.⁷

Personal data has consequently become a jurisdictional magnet. Because most digital systems process personal data, privacy bodies are drawn into disputes whose principal concerns may include market power, platform risk, AI safety, unfair commercial practices, access to data, research, cybersecurity or public administration. The personal-data trigger gives those bodies a legally relevant voice; it does not give them a mandate to settle the whole regulatory answer. The Court's insistence in *Meta Platforms Inc and Others v Bundeskartellamt* on sincere consultation across regimes confirms both propositions.⁸

The mismatch is not simply a proliferation of statutes. It is a problem of composite administration: facts are assembled in one venue, legal characterisation may occur in several different venues and with different authorities, and judicial review and remedies may be divided between national and Union courts. Recent scholarship describes this ecosystem in terms of redundancy and interdependence rather than cleanly separated competences. Redundancy may improve detection and resilience, but without coordination it can also multiply inconsistent interpretations, procedural burdens and sanctions.⁹

The EDPB and EDPS therefore bear a constitutional burden that the original settlement did not anticipate. EDPB guidance can fix the practical compliance perimeter for firms and public bodies; consistency opinions structure national decision-making; Article 65 decisions bind national authorities; EDPS opinions influence legislation across the digital *acquis*; and the EDPS now exercises ex ante and ex post AI Act functions. The legal system has expanded the reach of privacy institutions faster than the disciplines surrounding that reach.¹⁰

This is not an argument for demoting privacy. It is an argument for governing its centrality. The more a fundamental-rights architecture shapes other regulatory fields, the more it needs the ordinary virtues of public law: allocated competence, visible procedures, reasons, confidentiality controls, equality of arms and effective judicial protection. The Digital Omnibus provides the immediate context, but the institutional question survives whatever amendments the co-legislators ultimately adopt.¹¹

⁷ GDPR; Regulation (EU) 2022/2065 (Digital Services Act) [2022] OJ L 277/1; Regulation (EU) 2022/1925 (Digital Markets Act) [2022] OJ L 265/1; AI Act; Regulation (EU) 2023/2854 (Data Act) [2023] OJ L 2023/2854; Regulation (EU) 2022/868 (Data Governance Act) [2022] OJ L 152/1; Regulation (EU) 2024/2847 (Cyber Resilience Act) [2024] OJ L 2024/2847.

⁸ Case C-252/21 *Meta Platforms Inc and Others v Bundeskartellamt* EU:C:2023:537, paras 47–62 <https://infocuria.curia.europa.eu/tabs/redirect/juris/liste.jsf?num=C-252%2F21> accessed 14 July 2026.

⁹ Paul De Hert and Paweł Hajduk, 'EU Cross-Regime Enforcement, Redundancy and Interdependence: Addressing Overlap of Enforcement Structures in the Digital Sphere after Meta' (2024) *Technology and Regulation* 291 <https://doi.org/10.2139/ssrn.5048153> accessed 14 July 2026; De Gregorio and Vicinanza, 'Enforcement of European Digital Regulation'.

¹⁰ EDPB, *Statement 6/2024 on the Second Report on the Application of the GDPR—Fostering Cross-Regulatory Consistency and Cooperation* (3 December 2024); EDPS, *Towards a Digital Clearinghouse 2.0* (15 January 2025) https://www.edps.europa.eu/system/files/2025-01/towards_a_digital_clearinghouse_2_0_january_2025_en_0.pdf accessed 14 July 2026; EDPS, *The EDPS Compass for its New Role under the AI Act 2026–2027* (17 March 2026) https://www.edps.europa.eu/system/files/2026-03/26-03-17_edps-compass-under-ai-act-2026-2027_en.pdf accessed 14 July 2026.

¹¹ European Commission, Proposal for a Regulation as regards the simplification of the digital legislative framework, COM(2025) 837 final, 19 November 2025 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52025PC0837> accessed 14 July 2026; EDPB and EDPS, *Joint Opinion 2/2026 on the Digital Omnibus* (adopted 10 February 2026) https://www.edpb.europa.eu/system/files/2026-02/edpb_edps_jointopinion_202602_digitalomnibus_en.pdf accessed 14 July 2026.

2. What the EDPB and EDPS are - and What They are Not

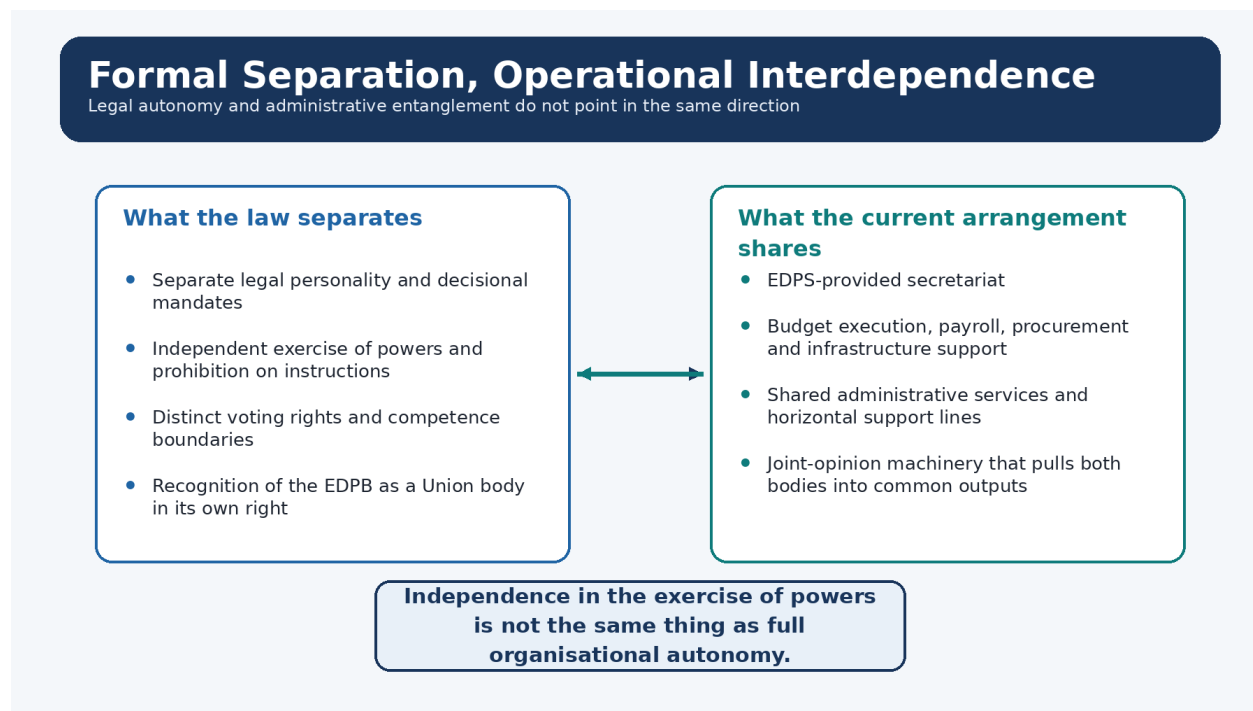


Figure 2. Formal separation and operational interdependence are different institutional facts.

Any reform proposal must begin with institutional precision. Article 68 GDPR establishes the EDPB as a Union body with legal personality, composed of the heads of national supervisory authorities and the EDPS or their representatives. The Board must act independently. It promotes cooperation, issues guidance, adopts consistency opinions and takes binding decisions under Article 65.¹²

The EDPB is not the Commission, a court, a general superior authority over national supervisory authorities or a conventional Union agency with its own complete administrative apparatus. Nor is it merely a forum. Its outputs shape the legal environment in which authorities, complainants, controllers and processors operate. Description by negation exposes the hybrid, but does not solve its accountability problem: the Board combines network composition, Union legal personality, soft-law production and binding dispute resolution.¹³

The EDPS is equally hybrid. Regulation 2018/1725 makes it the independent supervisor of Union institutions, bodies, offices and agencies and gives it a legislative advisory role. Article 75 GDPR requires it to provide the EDPB Secretariat. Under the AI Act, it is also the competent authority for Union institutions within scope, their market-surveillance authority and, for specified high-risk systems intended to be put into service by Union institutions, the notified body responsible for conformity assessment.¹⁴

Article 75 GDPR and the 2018 EDPB–EDPS Memorandum of Understanding govern a deliberately unusual arrangement. The Board is legally separate, while the EDPS supplies its administrative chassis. Secretariat personnel are EDPS staff but perform Board-related tasks under the instructions of the EDPB Chair. Separate reporting lines and Board-branded records recognise the risk of entanglement; they do not eliminate questions about appointment, budget, legal advice, access permissions, retention and institutional memory.¹⁵

¹² GDPR, arts 68–70.

¹³ EDPB, ‘The European Data Protection Board’ https://www.edpb.europa.eu/about-edpb/the-european-data-protection-board_en accessed 14 July 2026; Mustert and Santos, ‘European Data Protection Board’.

¹⁴ Regulation 2018/1725, arts 42 and 52; GDPR, art 75; AI Act, arts 43(1), 65(2), 70(9), 74(9) and 100; EDPS, ‘AI Act’ https://www.edps.europa.eu/data-protection/our-work/our-work-by-type/ai-act_en accessed 14 July 2026.

¹⁵ GDPR, art 75; EDPB–EDPS Memorandum of Understanding (25 May 2018); EDPB, *Rules of Procedure*, art 23.

That arrangement may have been proportionate for a lean consistency body. It is harder to justify for a Board whose work structures platform enforcement and cross-regulatory interpretation. The relevant distinction is between decisional independence and organisational autonomy. A body can be independent in the outcome of a file while remaining dependent on another body for people, procurement, technology and records. Each dependency creates a potential point at which responsibility can become difficult to attribute.¹⁶

The correct vocabulary is therefore responsibility, not an abstract choice between independence and dependence. Who controls the staff working on a Board file? Who authorises access? Who decides when legal advice becomes a Board position? Who records dissent? Who can explain whether the views of the EDPS, national authorities, the Commission or consulted stakeholders were accepted, rejected or filtered out? The problem is not proof that answers are improper. It is the absence of a sufficiently visible chain of custody for a body whose authority has outgrown its administrative settlement.¹⁷

Independence is therefore relational rather than absolute. The Board must be insulated from external instruction when deciding within its mandate. Still, it remains answerable to the legislature that defined that mandate, the courts that review its acts, the persons affected by its procedures and peer authorities whose statutory functions are materially engaged. Treating accountability as a threat to independence mistakes the condition of legitimate autonomy for its opposite.¹⁸

3. Cooperation Must be Defined before it can be Enforced

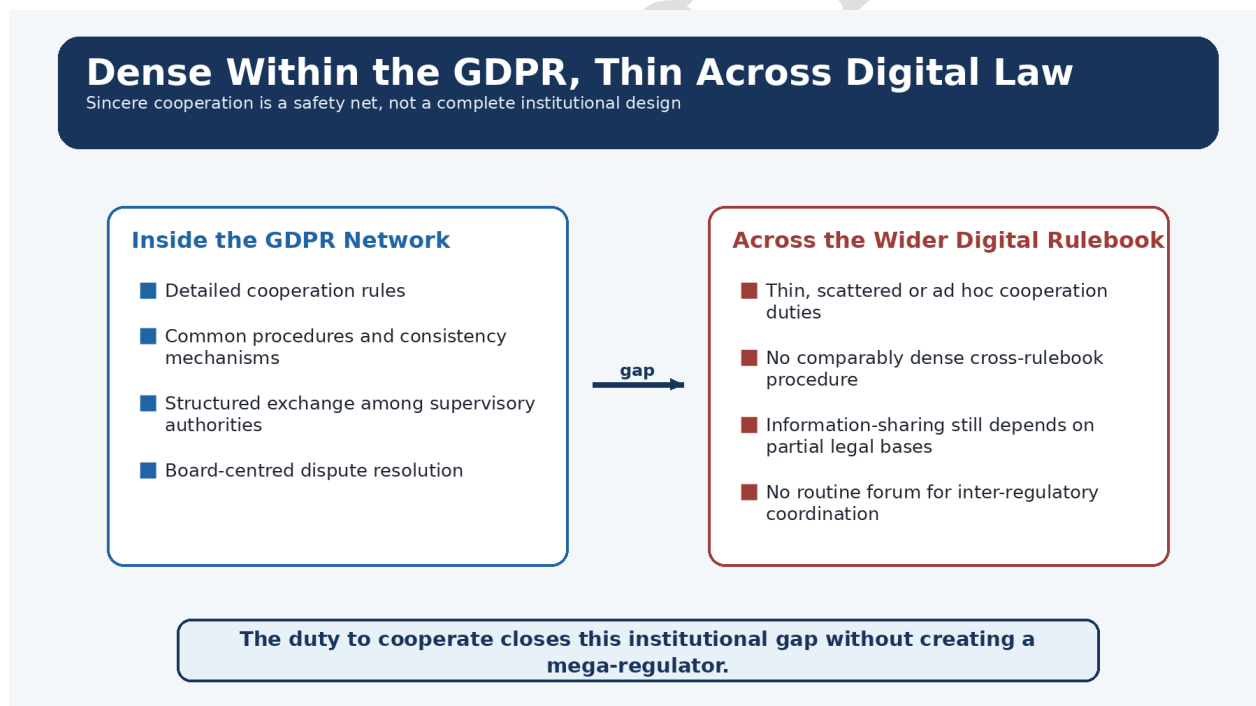


Figure 3. Cooperation is dense inside the GDPR network and comparatively thin across the wider digital rulebook.

‘Cooperation’ attracts agreement partly because actors can attach different meanings to it. A lead authority may mean consultation; a concerned authority may mean participation in framing the file; the EDPB may mean

¹⁶ Paul Craig, *EU Administrative Law* (3rd edn, OUP 2018) chs 5 and 12; Herwig CH Hofmann, Gerard C Rowe and Alexander H Türk, *Administrative Law and Policy of the European Union* (OUP 2011) chs 9–11.

¹⁷ Mustert and Santos, ‘European Data Protection Board’; Luca Bolognini, Tommaso Bonetti and Enrico Guarnieri, ‘The “Super-Powers” of the European Data Protection Board (EDPB) and the Principle of Due Administrative Procedure’ (2025) 1 *Diritto, Economia e Tecnologie della Privacy* <https://doi.org/10.5281/zenodo.14222793> accessed 14 July 2026.

¹⁸ Marta Simoncini, ‘The Separation of Powers and the Administrative Branch in the European Union’ (2025) 23 *International Journal of Constitutional Law* 923; Craig, *EU Administrative Law*.

consistency; the Commission may mean non-contradiction across the digital *acquis*; an undertaking may mean predictable public administration; and a complainant may mean effective collective enforcement. These expectations differ in object, intensity and legal effect.¹⁹

A useful legal taxonomy distinguishes cooperation from coordination and consistency. Cooperation concerns reciprocal processes: notice, exchange, consultation and assistance. Coordination concerns the ordering of parallel activity, including timing, evidence and remedies. Consistency concerns the compatibility of outcomes. A duty to cooperate can require the first two while permitting reasoned divergence on the third. Conflating them creates either paralysis, because every disagreement looks unlawful, or emptiness, because any contact is labelled cooperation.²⁰

A legally enforceable duty should therefore mean a structured obligation on relevant public authorities to identify overlapping mandates early, exchange necessary information on a lawful basis, frame the required assistance, respond within a reasonable time, protect confidentiality and rights of defence, give reasons for material divergence and coordinate remedies where cumulative effects matter—without surrendering statutory independence or creating an inter-regulatory veto.²¹

The duty needs identified addressees and a defined material scope. It should bind the EDPB, EDPS, national supervisory authorities, the Commission when enforcing the DMA or DSA, Digital Services Coordinators, the AI Office, AI market-surveillance authorities, competition authorities, consumer-protection authorities, cybersecurity authorities and bodies designated under the Data Act. Coverage should follow the exercise of public powers under listed Union digital acts, not the happenstance of a particular authority's institutional label.²²

The duty also needs a threshold. It should arise where an authority must materially assess conduct governed by another digital regime; where parallel proceedings create a realistic risk of incompatible findings, duplicative sanctions or cumulatively disproportionate remedies; where guidance is likely to fix the practical meaning of concepts used by another regulator; or where an authority proposes to rely on another body's intelligence, technical analysis or market assessment. 'Materially' should exclude remote or merely theoretical overlaps.²³

Consequences must be calibrated. A trivial delay should not invalidate a lawful act, and a consulted authority should not acquire a veto through silence. A serious failure to consult, disclose a material disagreement, protect defence rights, record the provenance of evidence or coordinate overlapping punitive responses should, however, be reviewable where it could have influenced the outcome or impaired effective judicial protection. That formulation connects cooperation to essential procedural requirements without converting it into a free-standing ground for tactical challenge.²⁴

The desired institutional ethic is reasoned non-unilateralism. Cooperation should make disagreement visible rather than manufacture consensus. A recorded and explained divergence preserves each authority's mandate, helps affected parties understand cumulative obligations and gives courts a real issue to review. An undocumented compromise may produce apparent consistency while concealing who made the determinative choice.²⁵

¹⁹ EDPS, *Digital Clearinghouse 2.0*, paras 44–50; De Hert and Hajduk, 'EU Cross-Regime Enforcement' 291–308.

²⁰ EDPB, *Template for Cross-Regulatory Cooperation Agreements*, explanatory note and arts 4–13.

²¹ *Meta Platforms*, paras 51–62; EDPB, *Template for Cross-Regulatory Cooperation Agreements*, arts 10–13.

²² McGuire and Schulte-Nölke, *Toolbox for the Enforcement of the Digital Rulebook* 12–14, 116–18; De Gregorio and Vicinanza, 'Enforcement of European Digital Regulation'.

²³ EDPB, *Template for Cross-Regulatory Cooperation Agreements*, arts 6, 10 and 11; EDPS, *Digital Clearinghouse 2.0*, paras 45–47.

²⁴ Charter, arts 41 and 47; Case C-97/91 *Oleificio Borelli SpA v Commission* EU:C:1992:491; Case C-219/17 *Berlusconi and Fininvest* EU:C:2018:1023.

²⁵ Simoncini, 'Separation of Powers' 923; Hofmann, Rowe and Türk, *Administrative Law and Policy of the European Union*.

4. The EDPB as a Power Centre, not a Benign Coordinator

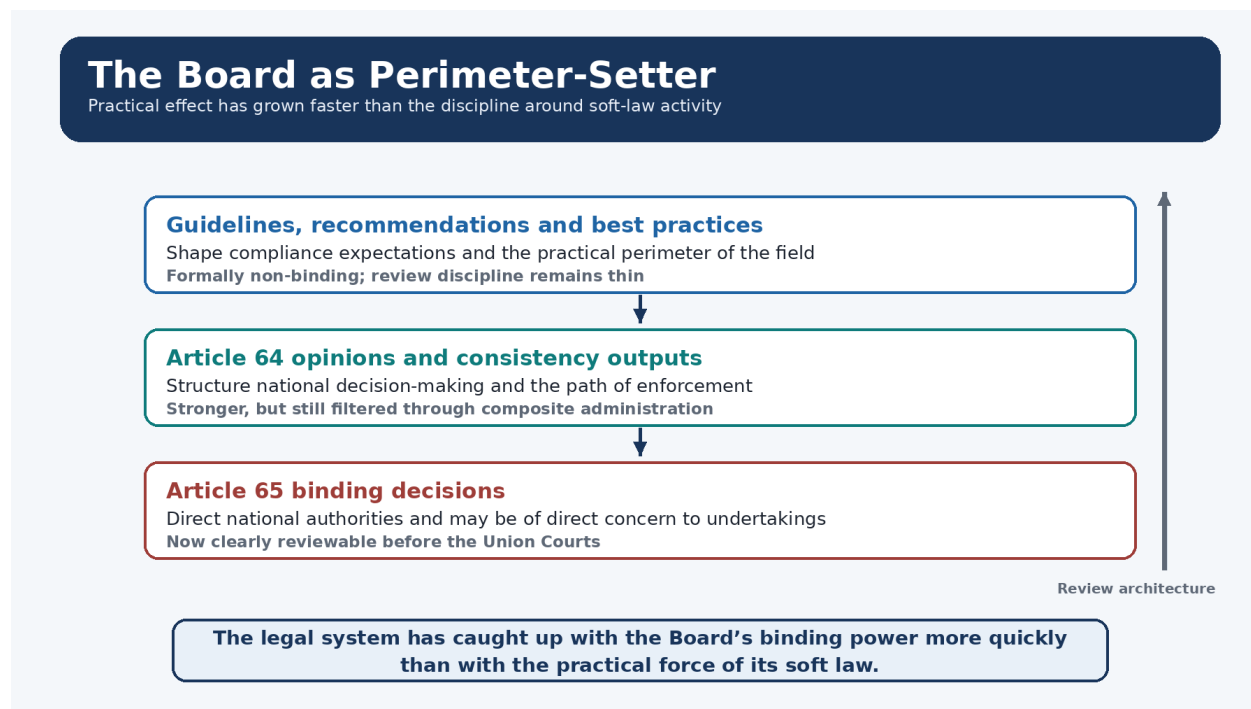


Figure 4. The Board's practical effect has grown faster than the procedural discipline surrounding its soft-law activity.

Article 70 GDPR assigns the EDPB a long list of tasks: ensuring consistent application, advising the Commission, issuing guidelines, recommendations and best practices, promoting cooperation, adopting consistency opinions and taking binding decisions. Their legal forms differ, but together they enable the Board to define the operational scope of data protection law. Accountability must therefore be matched to function rather than reduced to the binary question whether an instrument is formally binding.²⁶

Soft law is the most under-governed part of that authority. EDPB guidance is non-binding, but it is produced by a Union body that also resolves disputes and embodies the collective position of national supervisory authorities. Controllers, courts, engineers, investors and national authorities treat it as a focal point for lawful conduct. The practical cost of departing from guidance can be regulatory exposure, design rework or loss of market access even where the document cannot itself impose a legal obligation.²⁷

EU case law nevertheless requires precision. *Grimaldi* obliges national courts to consider recommendations, while *Belgium v Commission* and *Fédération bancaire française v Autorité de contrôle prudentiel et de résolution* distinguish non-binding acts from reviewable measures by reference to legal effects and available routes of challenge. These authorities do not make all EDPB guidance directly reviewable. They show why practical influence and formal legal effect must be analysed separately—and why ex-ante procedure matters most where direct review may be unavailable.²⁸

Major guidance should accordingly be accompanied by a consultation report, an impact note, an account of authorities consulted, a summary of material disagreement and a review date. Where guidance affects AI governance, platform design, competition, consumer protection or security engineering, the Board should explain which peer regulators were consulted and how their views affected the instrument. Participatory

²⁶ GDPR, art 70.

²⁷ Joana Mendes, 'EU Soft Law and Public Authority' in Mariolina Eliantonio, Emilia Korkea-aho and Oana Ștefan (eds), *EU Soft Law in the Member States* (Hart 2021); Mustert and Santos, 'European Data Protection Board'.

²⁸ Case C-322/88 *Grimaldi v Fonds des maladies professionnelles* EU:C:1989:646; Case C-16/16 P *Belgium v Commission* EU:C:2018:79; Case C-911/19 *Fédération bancaire française v Autorité de contrôle prudentiel et de résolution* EU:C:2021:599.

procedure is not a substitute for judicial review, but it supplies legitimacy, evidence and a record against which later review can operate.²⁹

Binding power requires a different analysis. In *WhatsApp Ireland Ltd v European Data Protection Board*, the Court of Justice held that an Article 65 decision was an act open to challenge and of direct concern to WhatsApp, set aside the General Court’s inadmissibility order and remitted the action for determination on the merits. The judgment does not turn guidance into binding law; it confirms that the Board cannot characterise a binding determination as merely internal coordination when the measure fixes the legal position that the lead authority must implement.³⁰

Ballmann v European Data Protection Board adds a complementary lesson. The General Court treated the Board’s refusal of access as an actionable measure and annulled it in light of the applicant’s Article 41(2)(b) right of access to the file. Together, *WhatsApp* and *Ballmann* narrow two accountability gaps: review of a binding Article 65 decision and access to the material necessary to understand EDPB procedure.³¹

5. The DPC, WhatsApp and Meta line: What Actually Happened and Why it Matters



Figure 5. The one-stop shop centralises dispute resolution only after the national file has already been shaped.

The WhatsApp and Meta cases expose the institutional design problem with unusual clarity. The DPC, as the lead supervisory authority, assembled the evidence, defined the initial scope, circulated draft decisions, and adopted the final national measures. Concerned authorities could object, and the EDPB could resolve the resulting dispute. The system therefore distributes agenda-setting, corrective power, legal responsibility and

²⁹ Bolognini, Bonetti and Guarnieri, ‘Super-Powers of the EDPB’; Mendes, ‘EU Soft Law and Public Authority’.

³⁰ Case C-97/23 P *WhatsApp Ireland Ltd v European Data Protection Board* EU:C:2026:81, especially paras 67–108 <https://infocuria.curia.europa.eu/tabs/redirect/juris/liste.jsf?num=C-97%2F23> accessed 14 July 2026.

³¹ Case T-183/23 *Ballmann v European Data Protection Board* EU:T:2025:735 <https://infocuria.curia.europa.eu/tabs/redirect/juris/liste.jsf?language=en&num=T-183%2F23> accessed 14 July 2026; *WhatsApp Ireland* EU:C:2026:81.

public visibility among different actors. Any evaluation that counts outcomes without accounting for those different procedural roles risks comparing unlike forms of regulatory labour.³²

5.1 WhatsApp Transparency: The First Warning Shot

The WhatsApp transparency inquiry began on 10 December 2018. It examined compliance with the GDPR's information and transparency obligations towards users and non-users, including information about processing between WhatsApp and other Facebook companies. On 24 December 2020, the DPC circulated a draft decision to the relevant authorities under Article 60 of the GDPR.³³

Eight concerned supervisory authorities raised objections. The DPC could not reach consensus and referred the dispute on 3 June 2021. The EDPB adopted Binding Decision 1/2021 on 28 July 2021, addressing the findings of infringement, the status of data concerning non-users and the corrective measures. Describing this simply as 'cooperation' obscures the institutional transition: a nationally framed investigation became a binding Union dispute-resolution process after the file was already mature.³⁴

The EDPB required the DPC to amend its approach and reassess the proposed fine. On 2 September 2021, the DPC imposed administrative fines totalling EUR 225 million, a reprimand and an order to bring processing into compliance. The amount is less significant here than the sequence of authority: national investigation, transnational objections, binding Board intervention, national implementation and then litigation about the Board's amenability to direct review.³⁵

The Court of Justice's February 2026 judgment resolved only the admissibility route. It did not determine the lawfulness of Binding Decision 1/2021, and it remitted the merits. That distinction matters. Effective judicial protection now reaches the Board's binding act, but review remains institutionally fragmented between the Union measure and the national decision implementing it. A cooperation framework should identify the author of each determinative proposition and preserve a record that allows the competent court to review the correct act.³⁶

5.2 Facebook, Instagram and WhatsApp Contract Cases: Objection as Institutional Power

The Facebook, Instagram and WhatsApp contractual-necessity cases sharpened the design problem. Complaints lodged on 25 May 2018 challenged reliance on Article 6(1)(b) GDPR for processing associated with personalised services and advertising. After objections to the DPC's draft decisions, the EDPB adopted Binding Decisions 3/2022, 4/2022 and 5/2022 on 5 December 2022. The DPC's final Facebook and Instagram decisions followed on 31 December 2022; the WhatsApp decision followed on 12 January 2023.³⁷

For Facebook and Instagram, the EDPB held that Meta could not rely on contractual necessity for behavioural advertising and directed that findings and corrective measures be included. The DPC's final decisions accordingly recorded conclusions that differed from its drafts. This is precisely what Article 65 is designed to

³² Buckley, Caulfield and Becker, 'GDPR and the indefinable effectiveness of privacy regulators'; Gentile and Lynskey, 'Deficient by Design?'.

³³ DPC, 'Data Protection Commission announces decision in WhatsApp inquiry' (2 September 2021) <https://www.dataprotection.ie/en/news-media/press-releases/data-protection-commission-announces-decision-whatsapp-inquiry> accessed 14 July 2026; EDPB, Binding Decision 1/2021 (28 July 2021).

³⁴ EDPB, *Binding Decision 1/2021 on the dispute arisen on the draft decision of the Irish Supervisory Authority regarding WhatsApp Ireland* (28 July 2021); DPC, WhatsApp decision (2 September 2021).

³⁵ DPC, 'Decision in WhatsApp inquiry' (2 September 2021); DPC, *Decision concerning WhatsApp Ireland Ltd* (2 September 2021).

³⁶ *WhatsApp Ireland* EU:C:2026:81; Court of Justice Press Release 11/26 (10 February 2026) <https://curia.europa.eu/site/upload/docs/application/pdf/2026-02/cp260011en.pdf> accessed 14 July 2026.

³⁷ EDPB, Binding Decisions 3/2022, 4/2022 and 5/2022 (5 December 2022); DPC, 'Data Protection Commission announces conclusion of two inquiries into Meta Ireland' (4 January 2023) <https://www.dataprotection.ie/en/news-media/data-protection-commission-announces-conclusion-two-inquiries-meta-ireland> accessed 14 July 2026; DPC, 'Conclusion of inquiry into WhatsApp' (19 January 2023) <https://www.dataprotection.ie/en/news-media/data-protection-commission-announces-conclusion-inquiry-whatsapp> accessed 14 July 2026.

achieve where relevant and reasoned objections persist, and it also demonstrates that the Board's intervention can alter both the legal characterisation and the remedial architecture.³⁸

The familiar public narrative—an overly narrow or lenient Irish authority corrected by Europe—captures only one interpretation. A lead authority bears the cost of investigation and primary reasoning; concerned authorities exercise objection rights; the Board settles specified disputes. That division can improve error correction, but it can also create incentives to reserve disagreements until a draft decision exists. The institutional question is not who deserves sympathy. It is whether the procedure reveals disagreements early enough and assigns responsibility for expanding the investigation.³⁹

The DPC's challenge to the 2022 binding decisions raised that boundary directly. Its strongest argument was constitutional rather than managerial: Article 65 is a dispute-resolution power within a cooperation system, not a general hierarchical power to direct an independent lead authority to open new investigations whenever the Board considers the existing perimeter to be incomplete.⁴⁰

The General Court rejected that argument in *Data Protection Commission v European Data Protection Board*, holding that the EDPB could require the DPC to extend its analysis and, if necessary, its investigation before issuing new draft decisions. The joined actions ended with the General Court's judgment of 29 January 2025. The result confirms a broad reading of Article 65 competence, but it does not remove the policy problem: strategic scope disputes are being resolved through litigation after years of administrative process.⁴¹

The underlying dilemma remains. If the EDPB may require investigation beyond the perimeter selected by the lead authority, it resembles a supervisor of supervisory authorities. If it may not, consistent enforcement may depend excessively on national framing choices. The proper response is not to conceal either consequence behind the word 'cooperation'. Legislation should specify the stage at which scope is proposed, the information concerned authorities receive, the grounds on which expansion may be sought, and the decision-maker to be consulted where disagreement persists.⁴²

Regulation (EU) 2025/2518 responds to part of this difficulty by requiring a summary of key issues early in the regular procedure. Its significance is architectural: it turns scope from an implicit prerogative of the lead authority into an object of structured inter-authority comment. The model should be extended across regimes, without turning every comment into a demand for an expanded investigation.⁴³

5.3 Leaks, noyb, Confidentiality and the Public Record

The public record also shows how easily composite procedures become contests over information. That does not justify accepting every allegation made by campaigners, companies, journalists, national authorities or the EDPB. It requires the opposite: a disciplined separation between authenticated procedural records, party allegations, disclosed documents, leaked material and institutional responses.⁴⁴

In October 2021, noyb published the DPC's draft decision on Facebook and urged other supervisory authorities to object. In November, it alleged that the DPC had conditioned further participation on confidentiality and

³⁸ EDPB, Binding Decisions 3/2022 and 4/2022; DPC, final Facebook and Instagram decisions (31 December 2022).

³⁹ Gentile and Lynskey, 'Deficient by Design?' 799–830; Mustert, 'From Cooperation to Confusion: The State of Cross-Border GDPR Enforcement' (27 June 2025) <https://realaw.blog/2025/06/27/from-cooperation-to-confusion-the-state-of-cross-border-gdpr-enforcement-by-lisette-mustert/> accessed 14 July 2026.

⁴⁰ Joined Cases T-70/23, T-84/23 and T-111/23 *Data Protection Commission v European Data Protection Board* EU:T:2025:116, paras 52–72 <https://infocuria.curia.europa.eu/tabs/redirect/juris/liste.jsf?num=T-70%2F23> accessed 14 July 2026.

⁴¹ *Data Protection Commission v European Data Protection Board* EU:T:2025:116; CJEU, *Monthly Case-Law Digest: January 2025*, 15–17.

⁴² Gentile and Lynskey, 'Deficient by Design?'; Regulation (EU) 2025/2518, arts 9–12.

⁴³ Regulation (EU) 2025/2518, art 10 and recitals 33–36.

⁴⁴ DPC, final Facebook decision (31 December 2022), including its account of the complainant's procedural allegations; noyb, 'Irish DPC greenlights Facebook's "GDPR bypass"' (13 October 2021) <https://noyb.eu/en/irish-dpc-greenlights-facebooks-gdpr-bypass> accessed 14 July 2026.

publicised a criminal complaint in Austria. The DPC's later final decisions set out its own account of the procedure and reject aspects of noyb's characterisation. These materials establish that a public dispute occurred; they do not by themselves establish misconduct.⁴⁵

The legally significant question is how confidentiality interacts with participation and review. Cooperation files contain deliberative exchanges among authorities; administrative files contain evidence on which liability may depend; complainants and undertakings have different procedural interests; and public-access rules operate alongside professional secrecy. *Ballmann v European Data Protection Board* demonstrates that access to the EDPB file cannot be treated as an administrative afterthought: the General Court annulled the Board's refusal and applied Article 41(2)(b) of the Charter to the access request before it.⁴⁶

A sound framework should therefore classify information at the point of exchange. Regulatory intelligence may justify opening or scoping a file without becoming proof of an infringement. Evidence relied upon in a final decision must be traceable, lawfully obtained and contestable, subject to justified redactions. Deliberative material may receive stronger protection, but the authority should record its provenance, access history and any later change in status. This prevents cooperation from becoming evidential laundering.⁴⁷

Reports that details of the December 2022 EDPB decisions circulated before formal publication do not establish the identity of a source. The absence of proof is itself instructive. High-stakes cooperation cannot rely only on professional culture. It needs access logs, lawful disclosure routes, incident procedures and proportionate sanctions, while avoiding confidentiality rules so broad that they disable participation or conceal the reasons for a binding outcome.⁴⁸

The supportive case for the DPC should therefore be institutional rather than partisan. The authority has produced extensive platform decisions and defended or implemented EDPB outcomes through litigation. It can be criticised for particular legal conclusions without treating regulatory output as evidence of bad faith. Comparable assessment requires metrics for investigative complexity, timeliness, procedural contribution, corrective effect and appellate durability—and requires the system to make sustained inaction visible as well.⁴⁹

6. The Procedural Regulation: A Partial Correction, Not the Answer

Regulation (EU) 2025/2518 is crucial because it legislates several features of cooperative administration within cross-border GDPR enforcement. It entered into force after publication in December 2025 but applies from 2 April 2027. The distinction must remain explicit: the Regulation is a completed legislative reform, not yet the procedure governing current investigations.⁵⁰

Its most important lesson is that cooperation can be made concrete. Article 10 requires the lead authority in the regular procedure to provide a summary of key issues within three months of confirming competence. The summary includes relevant facts, the preliminary scope, the GDPR provisions at issue, legal and factual

⁴⁵ noyb, 'Irish DPC removes noyb from GDPR procedure—criminal report filed' (23 November 2021) <https://noyb.eu/en/irish-dpc-removes-noyb-gdpr-procedure-criminal-report-filed> accessed 14 July 2026; DPC, final Facebook and Instagram decisions (31 December 2022). These sources evidence competing public accounts, not an adjudicated finding of misconduct.

⁴⁶ *Ballmann v European Data Protection Board* EU:T:2025:735, concerning Article 41(2)(b) of the Charter and access to the file prepared for the Article 65 procedure.

⁴⁷ Charter, arts 41 and 47; Regulation (EU) 2025/2518, arts 24–26; EDPB, *Template for Cross-Regulatory Cooperation Agreements*, arts 10 and 15.

⁴⁸ noyb, public materials on the 2021 procedure; DPC, final Facebook and Instagram decisions. No reliable public source identifies the source of any reported premature disclosure of the December 2022 EDPB decisions.

⁴⁹ DPC, *Annual Report 2025* (June 2026) <https://www.dataprotection.ie/sites/default/files/uploads/2026-06/DPC-Annual-Report-2025-Digital-AW.pdf> accessed 14 July 2026; Buckley, Caulfield and Becker, 'GDPR and the indefinable effectiveness of privacy regulators'.

⁵⁰ Regulation (EU) 2025/2518, arts 1 and 37 <https://eur-lex.europa.eu/eli/reg/2025/2518/oj/eng> accessed 14 July 2026. Article 37 provides that it applies from 2 April 2027.

questions, the available views of the complainant or the party under investigation, and, where applicable, potential corrective measures. Concerned authorities normally have four weeks to comment..⁵¹

The Regulation also distinguishes between an administrative file and a cooperation file, establishes access and confidentiality, provides rights to be heard, and sets timelines for draft decisions. Those choices matter because they separate inter-authority deliberation from the evidential record available to parties. Early scoping cannot guarantee agreement, but it shifts the disagreement to a stage where the file can still be changed without converting every omission into an Article 65 crisis..⁵²

Yet the Regulation is neither a complete cure nor a general institutional redesign. It is confined to cross-border GDPR enforcement; it does not give the EDPB autonomous administrative powers, govern the EDPS's role concentration, or provide a horizontal duty across the DSA, DMA, AI Act, consumer, competition, and cybersecurity regimes. Its multiple tracks may also reward authorities with the resources to participate intensively. It is best understood as proof that cooperation can be legislated—and as a warning that procedure without capacity may reproduce asymmetry..⁵³

7. The EDPS after the AI Act: Role Concentration is now a Legitimacy Problem

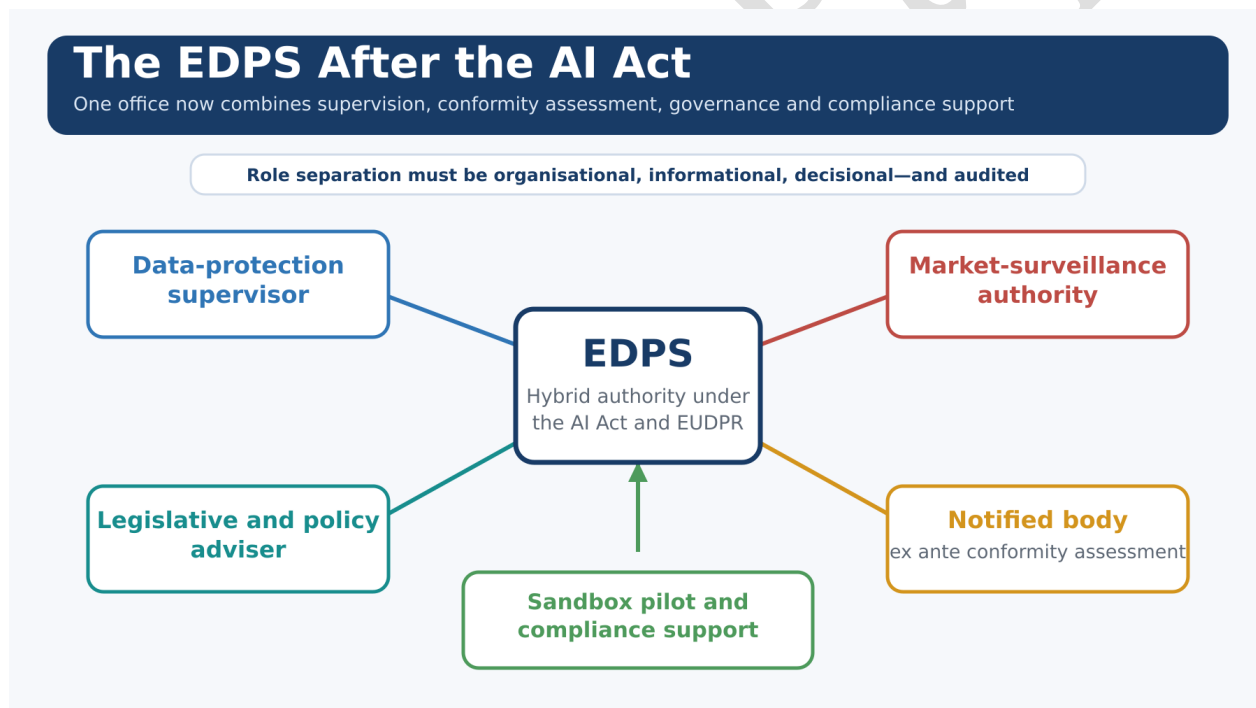


Figure 6. The AI Act makes the EDPS a hybrid regulator whose role separation must be auditable.

The EDPS requires equal scrutiny. Supplying the EDPB Secretariat is not a purely technical service where Board outputs have binding or system-shaping consequences. Combined with the EDPS's own supervisory and advisory mandates, its expanding digital-regulatory responsibilities create a risk that administrative convenience will be mistaken for institutional legitimacy..⁵⁴

⁵¹ Regulation (EU) 2025/2518, art 10; Arthur Cox, 'Cross-border processing complaints—what to expect with the new GDPR Procedural Regulation' (19 December 2025) <https://www.arthurcox.com/knowledge/cross-border-processing-complaints/> accessed 14 July 2026.

⁵² Regulation (EU) 2025/2518, arts 19–30, especially arts 24–26 on the administrative file, confidential information and cooperation file.

⁵³ Lisette Mustert, 'Too Complex to Work? The GDPR Procedural Regulation' (REALaw.blog, 10 April 2026); Regulation (EU) 2025/2518, arts 6–15.

⁵⁴ Regulation 2018/1725; GDPR, art 75; AI Act, arts 43(1), 65, 70, 74 and 100.

The AI Act designates the EDPS as the competent authority and market-surveillance authority for Union institutions, bodies, offices, and agencies within its scope. Article 43(1) also assigns it the responsibility of a notified body for specified high-risk AI systems intended to be put into service by Union institutions. The EDPS participates as an observer on the AI Board, runs an AI Act correspondents network, and has launched compliance support and sandbox activities. This is a concentration of ex ante assessment, ex post supervision, governance participation and institutional support.⁵⁵

The problem is not personal integrity but incompatible informational positions. The same office may help an institution understand compliance, assess a high-risk system before deployment, supervise its later use, and enforce compliance. Formal competence for each task does not answer whether staff, records or preliminary views can migrate between them. The EDPS Compass recognises that combining notified-body and market-surveillance functions creates challenges and commits to independence measures; legitimacy requires that those measures be specified, audited, and reported.⁵⁶

Ring-fencing must operate at four levels. Organisational separation assigns distinct reporting lines; informational separation restricts access and reuse; decisional separation prevents staff who advised or assessed from later determining enforcement; and external assurance tests whether those arrangements work. A policy that addresses only recusal at the final signature stage leaves the more important movement of information and preliminary judgment untouched.⁵⁷

A further debate on centralisation makes this design question more urgent. Public reporting of a May 2026 ICEL discussion records Professor Herke Kranenborg, speaking in a personal capacity, as supporting direct European handling of the largest cross-border cases. That is not a Commission proposal, but it demonstrates that the one-stop shop is no longer treated as institutionally untouchable.⁵⁸

If systemic platform files moved to the EDPS or another Union-level body, cooperation problems would change rather than disappear. National objection rights might become consultation; consensus might yield to hierarchy; and opacity might migrate from a dispersed network to a central office. Any central model would need a clear legislative mandate, separate budget and appointing authority, national participation rules, a complete administrative file, conflict safeguards and direct judicial review. Centralisation without those conditions would concentrate both capacity and error.⁵⁹

⁵⁵ EDPS, *EDPS Compass for its New Role under the AI Act 2026–2027* 4–5, 10–15.

⁵⁶ *ibid* 4–5, where the EDPS recognises that combining notified-body and market-surveillance roles poses additional challenges and commits to independence measures; AI Act, art 31.

⁵⁷ Craig, *EU Administrative Law*; EDPS, *EDPS Compass* 4–5, 10–13.

⁵⁸ Law Society Gazette, ‘GDPR “not useful” for systemic issues—Dixon’ (21 May 2026). The report attributes the centralisation suggestion to Professor Herke Kranenborg speaking in a personal capacity.

⁵⁹ This is a policy contingency, not an official Commission proposal. Compare McGuire and Schulte-Nölke, *Toolbox for the Enforcement of the Digital Rulebook*; EDPS, *Digital Clearinghouse 2.0*.

8. Overlap is now a constitutional structure, not marginal friction

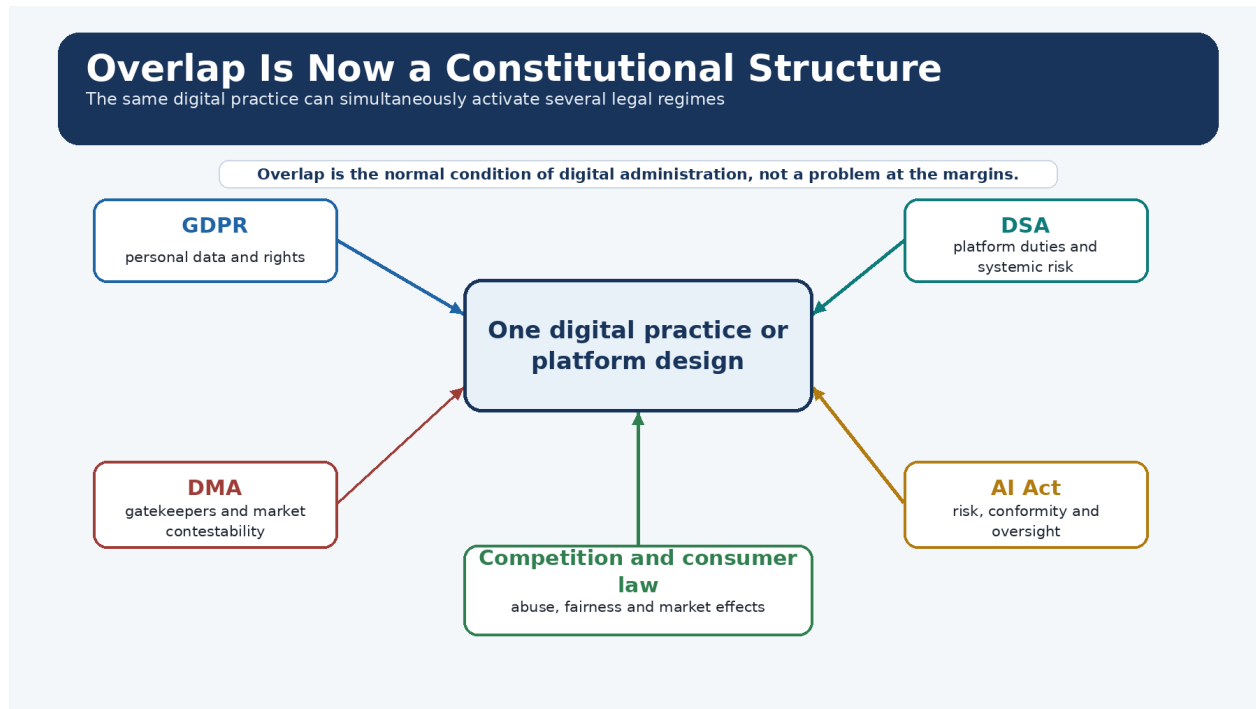


Figure 7. Overlap is now a constitutional structure rather than marginal friction.

The EU digital *acquis* deliberately overlaps. The DSA addresses intermediary services and systemic platform risks; the DMA addresses gatekeeper power and contestability; the AI Act addresses risk, conformity assessment, and governance; the Data Act and Data Governance Act address access, sharing, and intermediation; and cybersecurity instruments address resilience and reporting. The GDPR intersects with all of them where personal data are processed.⁶⁰

Overlap is not necessarily a drafting failure. Different regimes protect different legal interests and may supply useful redundancy: a deceptive interface can implicate autonomy, consumer choice, fair competition and data protection without those interests becoming interchangeable. The institutional objective should therefore be calibrated interdependence, not artificial exclusivity. Authorities must preserve their distinct statutory tests while coordinating shared facts and cumulative remedies.⁶¹

The Court's judgment in *Meta Platforms Inc and Others v Bundeskartellamt* supplies a constitutional minimum. A competition authority may incidentally assess GDPR compliance where necessary for its own task. Still, it must consult and cooperate sincerely with the competent data-protection authority and cannot depart from an existing data-protection decision concerning the same conduct. The judgment respects plural competence while imposing a rule against unilateral contradiction.⁶²

The same logic appears in *bpost SA v Autorité belge de la concurrence* and *Bundeswettbewerbsbehörde v Nordzucker AG*. Parallel punitive proceedings may be compatible with Article 50 of the Charter only where the duplication is sufficiently foreseeable, procedures are coordinated, and the overall penalties remain proportionate. Coordination is therefore not bureaucratic courtesy; it is part of the justification for cumulative enforcement.⁶³

⁶⁰ DSA; DMA; AI Act; Data Act; Data Governance Act; Cyber Resilience Act; GDPR.

⁶¹ De Hert and Hajduk, 'EU Cross-Regime Enforcement' 291–308; De Gregorio and Vicinanza, 'Enforcement of European Digital Regulation'.

⁶² *Meta Platforms Inc and Others v Bundeskartellamt* EU:C:2023:537, paras 47–62.

⁶³ Case C-117/20 *bpost SA v Autorité belge de la concurrence* EU:C:2022:202, paras 47–58; Case C-151/20 *Bundeswettbewerbsbehörde v Nordzucker AG* EU:C:2022:203; Charter, art 50.

A June 2026 European Parliament study reaches the same problem from enforcement design. It identifies gaps, overlaps, and inconsistencies across the Digital Rulebook and proposes a horizontal toolbox that could ultimately become a directive and complementary regulation. Its emphasis on coordinating multiple judicial and administrative proceedings supports a statutory solution, while its breadth cautions that a duty to cooperate must connect public enforcement with private remedies and effective judicial protection..⁶⁴

The EDPB's practice has moved materially in 2026. Its March conference addressed competition, DMA and DSA interfaces, and on 7 July it adopted a Template for Cross-Regulatory Cooperation Agreements covering consultation, information exchange and joint procedures. The template is welcome evidence of institutional learning. Its voluntary and bilateral design also reveals the remaining gap: cooperation still depends on selected clauses, local legal bases and willingness to participate..⁶⁵

9. Innovation, Competitiveness and the Missing Method of Balancing

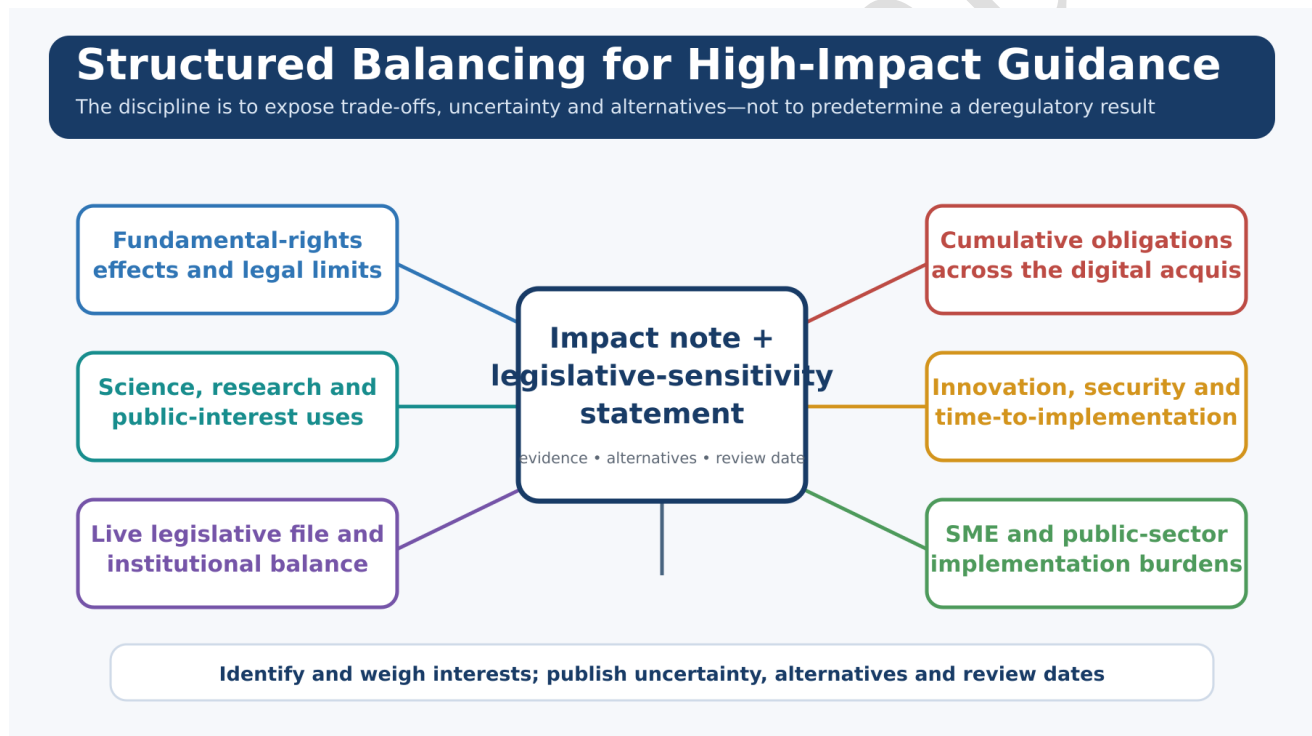


Figure 8. The missing method is structured balancing, not a wholesale turn away from rights.

A serious critique should not claim that the EDPB and EDPS ignore innovation. The Helsinki Statement, the 2026–2027 Work Programme and recent joint opinions speak expressly of clarity, support, engagement, innovation and competitiveness. The sharper criticism is methodological: the institutions do not yet publish a stable account of how they identify, weigh and revisit the effects of high-impact guidance on other rights, regulatory objectives and implementation systems..⁶⁶

Structured balancing does not reduce Article 8 of the Charter to an economic variable. It begins by specifying the legal source and intensity of each interest: data protection, freedom to conduct a business, freedom of

⁶⁴ McGuire and Schulte-Nölke, *Toolbox for the Enforcement of the Digital Rulebook* 12–14, 115–18.

⁶⁵ EDPB, ‘Conference on cross-regulatory cooperation: what we learned’ (24 March 2026) https://www.edpb.europa.eu/news/news/2026/edpb-conference-cross-regulatory-cooperation-what-we-learned_en accessed 14 July 2026; EDPB, *Template for Cross-Regulatory Cooperation Agreements*.

⁶⁶ EDPB, *Helsinki Statement on Enhanced Clarity, Support and Engagement: A Fundamental Rights Approach to Innovation and Competitiveness* (2 July 2025) https://www.edpb.europa.eu/documents/reports-statements-and-letters/the-helsinki-statement-on-enhanced-clarity-support-and_en accessed 14 July 2026; EDPB, *Work Programme 2026–2027* (12 February 2026) https://www.edpb.europa.eu/system/files/2026-02/edpb_work-programme_2026-2027_en.pdf accessed 14 July 2026.

science, consumer protection, security, equality and effective administration. It then distinguishes a legal limit from a policy choice, records the evidence and uncertainty, tests less burdensome means, considers cumulative effects with other regimes and fixes a review point. The discipline lies in showing the work, not in promising a predetermined pro-innovation result.⁶⁷

The more serious concern is that some EDPB outputs operate at the boundary between legal interpretation and policy determination. Articles 64 and 70 GDPR empower the Board to support consistent application; they do not make it a co-legislator. That boundary becomes constitutionally sensitive during an active legislative procedure, when Parliament and Council are deciding whether to recalibrate the underlying settlement. *Meroni* and *United Kingdom v Parliament and Council* do not prohibit expert administration, but they insist that delegated authority remain bounded by the legislative framework and reviewable criteria.⁶⁸

Opinion 08/2024 illustrates the issue. Formally, it is an Article 64(2) opinion on the validity of consent in ‘consent or pay’ models used by large online platforms. Substantively, it concludes that in most cases, a binary choice between consenting to behavioural advertising and paying a fee will not yield valid consent and urges serious consideration of a further free alternative that does not involve behavioural advertising. The privacy analysis may be persuasive, but its operational effect reaches pricing and platform monetisation. That is a reason for a cross-regulatory impact statement, not a reason for the Board to remain silent.⁶⁹

Guidelines 1/2026 on scientific research provide a second example. Adopted for public consultation on 15 April 2026, with consultation closing on 25 June, they were issued while the Digital Omnibus legislative process was considering amendments affecting scientific research. The Guidelines acknowledge the relationship between Article 8 data protection and Article 13 freedom of the arts and sciences. A legislative-sensitivity statement would make explicit which propositions interpret existing law, which respond to unsettled policy and why guidance is needed before the legislative file concludes.⁷⁰

This is not an argument for regulatory silence. The EDPB and EDPS must be able to advise, warn and clarify. The appropriate constraint is procedural: high-impact guidance issued during a live legislative file should identify the procedure, explain the urgency, distinguish interpretation from recommendation, state the adjacent public interests and the regulators consulted, and commit to review after the legislative outcome. Advice remains advice; quasi-rulemaking acquires a visible democratic boundary.⁷¹

Symmetry also matters. The EDPB and EDPS frequently—and often correctly—ask the Commission for impact assessment, evidence, and fundamental rights analysis. When the Board issues guidance that shapes product architecture, research design or public services, there is no equivalent statutory duty to publish a concise impact note covering SMEs, public administration, security, competition, consumer fairness and cumulative obligations across the *acquis*.⁷²

A proportionate impact note need not become a cost-benefit veto. It should identify affected actors, rights and regulatory objectives; evidence and data gaps; implementation and interaction costs; alternatives considered; authorities consulted; material disagreement; and a review date. The burden should scale with practical effect.

⁶⁷ Charter, arts 8, 13, 16, 38, 41 and 47; European Law Institute, *Simpler, Fairer, More Effective—Towards a Targeted Revision of EU Data Protection Law* (14 October 2025).

⁶⁸ TEU, art 13(2); TFEU, arts 16(2), 290 and 291; Case 9/56 *Meroni & Co Industrie Metallurgiche SpA v High Authority* EU:C:1958:7; Case C-270/12 *United Kingdom v Parliament and Council* EU:C:2014:18; Simoncini, ‘Separation of Powers’.

⁶⁹ EDPB, *Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms* (17 April 2024) paras 179–181; *Meta Platforms* EU:C:2023:537, para 150.

⁷⁰ EDPB, *Guidelines 1/2026 on Processing of Personal Data for Scientific Research Purposes* (version for public consultation, adopted 15 April 2026) paras 1–9; EDPB consultation page, feedback period 16 April–25 June 2026 https://www.edpb.europa.eu/public-consultations_en accessed 14 July 2026.

⁷¹ European Commission, Digital Omnibus, COM(2025) 837 final; EDPB and EDPS, *Joint Opinion 2/2026*, paras 29–30.

⁷² EDPB and EDPS, *Joint Opinion 1/2026 on the Digital Omnibus on AI* (adopted 20 January 2026) https://www.edpb.europa.eu/system/files/2026-01/edpb_edps_jointopinion_202601_proposal_ai-omnibus_en.pdf accessed 14 July 2026; EDPB and EDPS, *Joint Opinion 2/2026*.

Guidance capable of reorganising a sector deserves more process than a technical clarification. Rights are strengthened, not diluted, when the reasoning used to protect them is transparent and revisable..⁷³

10. Reform package: Cooperative Centrality without a Mega-Regulator



Figure 9. The reform package reduces unilateralism by redistributing power through cooperation, separation and review.

A. Give the EDPB a more autonomous administrative base

The strongest institutional solution is a small stand-alone EDPB office with its own appointing authority, administrative services, budget line, information systems and internal procedural code. A more modest solution would harden the present arrangement in legislation through protected budget capacity, statutory reporting lines, access-control rules, publication of shared-service arrangements, an annual independence statement and external audit of file separation. Either is preferable to leaving a memorandum as the administrative spine of a body with binding powers..⁷⁴

B. Legalise inter-regulatory cooperation

The EDPB's Template for Cross-Regulatory Cooperation Agreements, adopted on 7 July 2026, is a valuable starting point. It covers meetings, knowledge exchange, joint guidance, referrals, information exchange, consultation, common strategies, joint procedures and confidentiality. Yet it is expressly flexible, non-binding, selectable on a provision-by-provision basis, and dependent on agreements between signatories. A template can normalise good practice; it cannot guarantee a legal basis for sharing, compel participation, protect third-party rights or supply a review standard. The proposed duty should turn the template's strongest elements into a statutory floor..⁷⁵

⁷³ McGuire and Schulte-Nölke, *Toolbox for the Enforcement of the Digital Rulebook*; Hans Graux and others, *Interplay between the AI Act and the EU Digital Legislative Framework* (European Parliament, PE 778.575, October 2025).

⁷⁴ GDPR, arts 68–75; EDPB–EDPS Memorandum of Understanding; *WhatsApp Ireland* EU:C:2026:81; Mustert and Santos, 'European Data Protection Board'.

⁷⁵ EDPB, *Template for Cross-Regulatory Cooperation Agreements*, explanatory note (expressly flexible and non-binding) and arts 4–20.

The legislative vehicle requires care. Article 13(2) TEU establishes a duty of sincere cooperation among Union institutions, while Article 4(3) primarily establishes loyalty between the Union and Member States. Those principles inform interpretation but do not, without more, answer who must notify whom, what may lawfully be shared or when failure affects validity. A horizontal regulation, or coordinated amendments with a common operative clause, would provide greater legal certainty than reliance on loyalty alone.⁷⁶

C. Ring-fence the EDPS's roles

The EDPS should be subject to hard ring-fencing for AI Act functions and any future platform-supervision role. EDPB secretariat work, legislative advice, notified-body assessment, market surveillance, complaint handling, ordinary data-protection supervision and compliance support should sit behind separate decision chains, role-based access controls, conflict registers and auditable information barriers. Where an effective separation cannot be demonstrated—particularly between conformity assessment and later enforcement—the function should be relocated.⁷⁷

D. Put major soft law under public-law discipline

Major EDPB guidance and EDPB–EDPS joint opinions should publish consultation reports, peer-authority consultation statements, proportionate impact notes, summaries of material disagreement and review dates. Where Parliament and Council are actively considering the same concept, a legislative-sensitivity statement should distinguish current-law interpretation from policy development. These requirements respond to practical force, not nominal form.⁷⁸

E. Create a common accountability layer

The Union should create common reporting categories and a public database for significant GDPR enforcement actions, including Article 60 and Article 65 files, timelines, objections, corrective measures, appeals, and cooperation failures. Statistics must distinguish complaints received, investigations opened, complex files led, contributions as a concerned authority, binding outcomes, implementation and appellate durability. Comparable data would reduce the selection effect by making both contribution and inactivity more visible.⁷⁹

F. Protect against evidential laundering and strategic leakage

Information sharing should be encouraged, but evidence should not move across regimes without safeguards. The law should distinguish regulatory intelligence, expert knowledge, technical material, protected deliberation and evidence relied upon to establish liability. Every evidential transfer should record source, legal basis, permitted use, confidentiality status and disclosure to affected parties. Incident and leak procedures should protect legitimate secrecy without turning confidentiality into a shield against reasons or review.⁸⁰

⁷⁶ TEU, arts 4(3) and 13(2); Klamert, *Principle of Loyalty in EU Law*; McGuire and Schulte-Nölke, *Toolbox for the Enforcement of the Digital Rulebook* 12–14.

⁷⁷ AI Act, arts 31 and 43(1); EDPS, *EDPS Compass* 4–5, 10–13.

⁷⁸ Mendes, ‘EU Soft Law and Public Authority’; Bolognini, Bonetti and Guarnieri, ‘Super-Powers of the EDPB’; Mustert and Santos, ‘European Data Protection Board’.

⁷⁹ Buckley, Caulfield and Becker, ‘GDPR and the indefinable effectiveness of privacy regulators’; EDPB, *Annual Report 2025* (9 April 2026) https://www.edpb.europa.eu/system/files_en?file=2026-05%2Fedpb-annual-report-2025_en.pdf accessed 14 July 2026; Regulation (EU) 2025/2518, art 34.

⁸⁰ Charter, arts 41 and 47; Regulation (EU) 2025/2518, arts 24–26; EDPB, *Template for Cross-Regulatory Cooperation Agreements*, arts 10, 13 and 15.

11. The duty to cooperate: a model clause

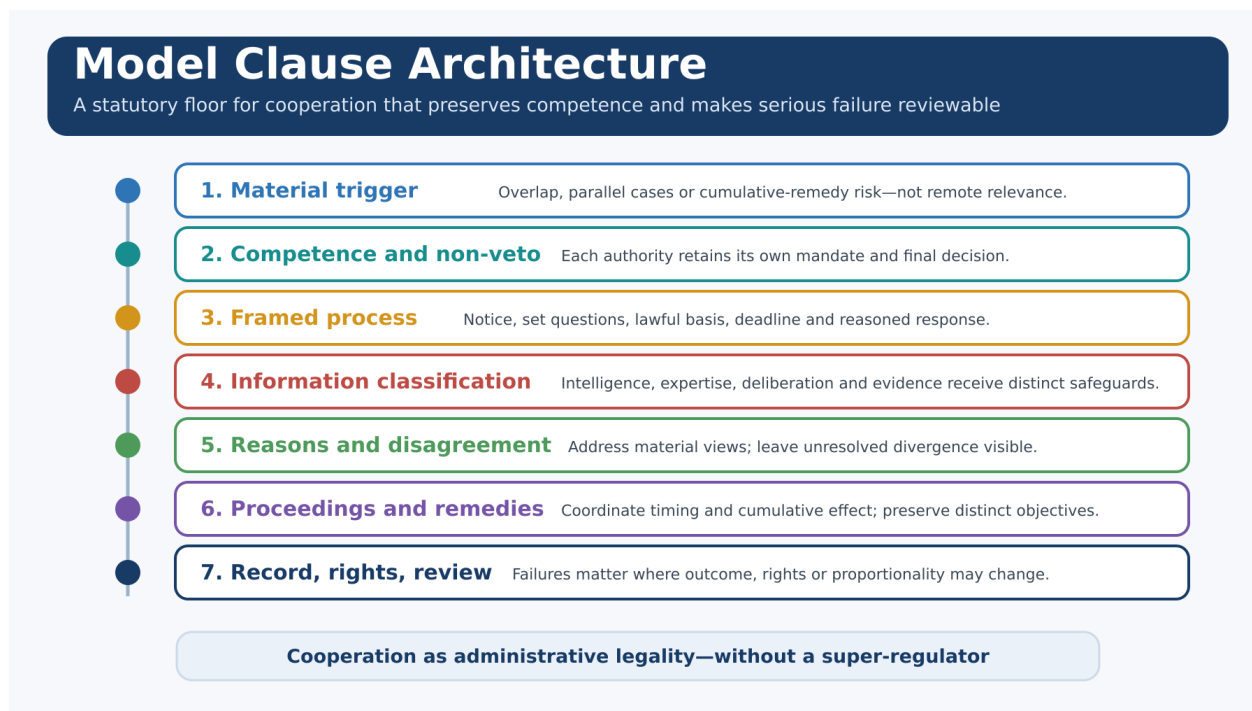


Figure 10. The model clause separates trigger, process, evidence, remedies and review.

The model clause below treats cooperation as a subsidiary rule of administrative legality. Detailed sectoral coordination rules prevail; the horizontal clause fills remaining gaps. It neither reallocates substantive competence nor creates a super-regulator. It requires each authority to exercise its own mandate in a way that makes interdependence visible and reviewable. The design draws on Article 13(2) TEU, *Meta Platforms*, the 2025 Procedural Regulation, and the EDPB’s July 2026 template, while going beyond each of them.⁸¹

Article X — Duty of Inter-Regulatory Cooperation in Digital Regulation

1. Trigger and threshold. Where a competent authority exercises powers under Union digital regulation and the matter materially implicates the interpretation, enforcement or remedial objectives of another listed Union digital act, or creates a realistic risk of incompatible findings or cumulatively disproportionate remedies, that authority shall cooperate with the competent authority or authorities responsible for that act.
2. Competence and non-veto. Cooperation under this Article shall not modify an authority’s statutory tasks, transfer decision-making power or confer a veto. Each authority remains responsible for the legality, evidence, reasons and remedies within its competence.
3. Covered acts. The duty applies to investigations, draft and final decisions, settlements, guidance, recommendations, opinions, templates, codes of conduct, technical methodologies and other instruments capable of materially affecting another listed Union digital act.
4. Legislative sensitivity. Where a covered non-binding instrument concerns a legal concept that is materially at issue in an ongoing Union legislative procedure, the issuing authority shall identify that procedure, distinguish interpretation of existing law from policy recommendation, explain why action before completion of the procedure is necessary and record consultation with relevant Union institutions and competent authorities.

⁸¹ TEU, art 13(2); *Meta Platforms* EU:C:2023:537; Regulation (EU) 2025/2518; EDPB, *Template for Cross-Regulatory Cooperation Agreements*; the model clause remains a policy proposal rather than a statement of current law.

5. Notice and framing. The consulting authority shall give written notice identifying the relevant facts, legal questions, overlap, assistance requested, parallel proceedings, urgency, confidentiality classification, proposed response period, and the consequences of non-response.
6. Reasoned response and non-paralysis. The consulted authority shall respond within the period fixed by law or a reasonable period stated in the notice, providing relevant legal, factual, technical or enforcement information or reasons for declining. An absent or late response shall not prevent action where the consulting authority records the request, urgency and reasons for proceeding.
7. Record and reasons. The final act shall identify the material cooperation undertaken and provide reasons for accepting or rejecting a material view from a consulted authority. It shall identify unresolved disagreement without attributing confidential material beyond what is necessary for rights of defence and judicial review.
8. Information classification. Authorities may exchange information necessary for this Article where a legal basis permits. At the point of exchange, they shall classify it as regulatory intelligence, expert or technical material, protected deliberation, or potential evidence, and record its source, permitted use, access restrictions, and retention period.
9. Evidential safeguards. Material relied upon to establish an infringement shall be lawfully obtained, traceable to its source, placed on the administrative file, disclosed to affected parties subject to justified confidentiality restrictions and capable of effective challenge. Information may not acquire evidential status merely because another authority supplied it.
10. Parallel proceedings and remedies. Authorities addressing the same or closely related conduct shall exchange sufficient information on the scope, timing, and contemplated corrective measures to reduce incompatible outcomes, duplicative sanctions, and cumulatively disproportionate remedies, while preserving the distinct objectives of each act.
11. Review. A serious failure to comply with this Article shall constitute a reviewable procedural defect where it could have influenced the outcome, impaired a party's rights, concealed a material conflict of competence or increased the risk of inconsistent or disproportionate enforcement. Minor irregularities without such effects shall not invalidate the act.
12. Transparency, capacity and evaluation. Designated authorities shall publish their cooperation arrangements, nominated contact points and annual aggregate information on requests, responses, joint work and material failures. The Commission shall review the operation, resource effects and rights impact of this Article every three years.

The clause supplies what voluntary cooperation lacks: a threshold, legal duties, rights safeguards, a record and calibrated consequences. It also avoids the centralising error of treating coherence as uniformity. The EDPB's July 2026 template shows that authorities can agree practical arrangements; the model clause explains which minimum obligations should not depend on whether they do.⁸²

12. Conclusion: Disciplining the EDPB/EDPS Complex

The Union need not choose between privacy and workable digital governance. The real choice is between privacy centrality by drift and privacy centrality under law. Drift permits soft law, administrative interdependence, the personal-data trigger and late-stage dispute settlement to expand authority without a complete accountability architecture. Centrality under law conditions that authority on cooperation, reasons, separation, capacity and review.

The EDPB and EDPS should remain powerful. Precisely for that reason, sectoral independence is an incomplete constitutional vocabulary. Independence must identify from whom, for which function and subject to what

⁸² EDPB, *Template for Cross-Regulatory Cooperation Agreements*, especially arts 4, 10–13 and 15; McGuire and Schulte-Nölke, *Toolbox for the Enforcement of the Digital Rulebook*.

safeguards. Administrative arrangements must be visible; major soft law must be subject to a proportionate procedure; cooperation with adjacent regulators must have a legal basis; and concentrated EDPS functions must be separated in a way that can be audited.

A duty to cooperate is the best reform lever because it accepts rather than denies overlap. It gives concrete form to institutional loyalty, disciplines composite administration and makes cumulative enforcement easier to review. It allows privacy bodies to speak strongly without speaking alone. It permits adjacent regulators to pursue their mandates without treating data protection as either a trump card or somebody else's problem.

The most recent developments strengthen rather than displace that conclusion. The 2025 Procedural Regulation demonstrates that early scoping, files, timelines, and hearing rights can be legislated; the EDPB's July 2026 template demonstrates that cross-regulatory practice can be systematised; and the European Parliament's June 2026 study places horizontal enforcement coordination on the policy agenda. The remaining task is to convert cooperative aspiration into reviewable administration: not less privacy, but less drift; not weaker rights, but institutions capable of governing them together.⁸³

⁸³ Regulation (EU) 2025/2518; EDPB, *Template for Cross-Regulatory Cooperation Agreements* (7 July 2026); McGuire and Schulte-Nölke, *Toolbox for the Enforcement of the Digital Rulebook* (June 2026); Charter, arts 8, 41 and 47.

References

Legislation and Treaties

- Charter of Fundamental Rights of the European Union [2012] OJ C 326/391.
- Consolidated version of the Treaty on European Union [2016] OJ C 202/13.
- Consolidated version of the Treaty on the Functioning of the European Union [2016] OJ C 202/47.
- Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation) [2016] OJ L 119/1.
- Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 [2018] OJ L 295/39.
- Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 (Digital Markets Act) [2022] OJ L 265/1.
- Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 (Digital Services Act) [2022] OJ L 277/1.
- Regulation (EU) 2022/868 of the European Parliament and of the Council of 30 May 2022 (Data Governance Act) [2022] OJ L 152/1.
- Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 (Data Act) [2023] OJ L 2023/2854.
- Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L 2024/1689.
- Regulation (EU) 2024/2847 of the European Parliament and of the Council of 23 October 2024 (Cyber Resilience Act) [2024] OJ L 2024/2847.
- Regulation (EU) 2025/2518 of the European Parliament and of the Council of 26 November 2025 laying down additional procedural rules on the enforcement of Regulation (EU) 2016/679 [2025] OJ L 2025/2518.

Cases and Judicial Materials

- Case 9/56 *Meroni & Co Industrie Metallurgiche SpA v High Authority* EU:C:1958:7.
- Case C-322/88 *Grimaldi v Fonds des maladies professionnelles* EU:C:1989:646.
- Case C-97/91 *Oleificio Borelli SpA v Commission* EU:C:1992:491.
- Case C-270/12 *United Kingdom v Parliament and Council* EU:C:2014:18.
- Case C-16/16 P *Belgium v Commission* EU:C:2018:79.
- Case C-219/17 *Berlusconi and Fininvest* EU:C:2018:1023.
- Case C-911/19 *Fédération bancaire française v Autorité de contrôle prudentiel et de résolution* EU:C:2021:599.
- Case C-117/20 *bpost SA v Autorité belge de la concurrence* EU:C:2022:202.
- Case C-151/20 *Bundeswettbewerbsbehörde v Nordzucker AG* EU:C:2022:203.
- Case C-252/21 *Meta Platforms Inc and Others v Bundeskartellamt* EU:C:2023:537.
- Joined Cases T-70/23, T-84/23 and T-111/23 *Data Protection Commission v European Data Protection Board* EU:T:2025:116.
- Case T-183/23 *Lisa Ballmann v European Data Protection Board* EU:T:2025:735.
- Case C-97/23 P *WhatsApp Ireland Ltd v European Data Protection Board* EU:C:2026:81.

Official and Institutional Materials

- Council of the European Union, Council adopts new EU law to speed-up handling of cross-border data protection complaints (Press Release, 17 November 2025).
- Data Protection Commission, Decision concerning WhatsApp Ireland Ltd (2 September 2021).
- Data Protection Commission, *Annual Report 2025* (June 2026) <https://www.dataprotection.ie/sites/default/files/uploads/2026-06/DPC-Annual-Report-2025-Digital-AW.pdf> accessed 14 July 2026.

- European Commission and European Data Protection Board, Joint Guidelines on the Interplay between the Digital Markets Act and the General Data Protection Regulation (9 October 2025, draft for public consultation).
- European Data Protection Board, *Annual Report 2025* (9 April 2026) https://www.edpb.europa.eu/system/files/en?file=2026-05%2Fedpb-annual-report-2025_en.pdf accessed 14 July 2026.
- European Data Protection Board, Binding Decision 1/2021 on the dispute arisen on the draft decision of the Irish Supervisory Authority regarding WhatsApp Ireland under Article 65(1)(a) GDPR (28 July 2021).
- European Data Protection Board, Binding Decisions 3/2022, 4/2022 and 5/2022 concerning Meta Platforms Ireland under Article 65 GDPR.
- European Data Protection Board, EDPB Strategy 2024-2027 (April 2024).
- European Data Protection Board, *EDPB Work Programme 2026–2027* (12 February 2026) https://www.edpb.europa.eu/system/files/2026-02/edpb_work-programme_2026-2027_en.pdf accessed 14 July 2026.
- European Data Protection Board, Guidelines 3/2025 on the interplay between the Digital Services Act and the GDPR (11 September 2025, version for public consultation).
- European Data Protection Board, Statement 6/2024 on the Second Report on the Application of the General Data Protection Regulation - Fostering Cross-Regulatory Consistency and Cooperation (3 December 2024).
- European Data Protection Board and European Data Protection Supervisor, Memorandum of Understanding between the EDPB and the EDPS (25 May 2018).
- European Data Protection Board and European Data Protection Supervisor, Joint Opinion 1/2026 on the AI Omnibus (20 January 2026).
- European Data Protection Board and European Data Protection Supervisor, Joint Opinion 2/2026 on the Digital Omnibus (11 February 2026).
- European Data Protection Board, *Template for Cross-Regulatory Cooperation Agreements* (7 July 2026) https://www.edpb.europa.eu/system/files/2026-07/edpb_template_2026_cross-regulatory_cooperation_agreement_en.pdf accessed 14 July 2026.
- European Data Protection Supervisor, *Towards a Digital Clearinghouse 2.0: Championing a Consistent Supervisory Approach for the Digital Economy* (15 January 2025) https://www.edps.europa.eu/system/files/2025-01/towards_a_digital_clearinghouse_2_0_january_2025_en_0.pdf accessed 14 July 2026.
- European Data Protection Supervisor, *Towards Trustworthy AI in the EU Public Administration: The EDPS Compass for its New Role under the AI Act 2026–2027* (17 March 2026) https://www.edps.europa.eu/system/files/2026-03/26-03-17_edps-compass-under-ai-act-2026-2027_en.pdf accessed 14 July 2026.
- Wojciech Wiewiorowski, Governance and Enforcement structure of the AI Act (speech to the IMCO-LIBE AI Act Working Group, 4 March 2026).

News, Public-Source Materials and Commentary

- Arthur Cox, Cross-border processing complaints - What to expect with the new GDPR Procedural Regulation (19 December 2025).
- DAC Beachcroft, Challenging European Data Protection Board decisions: WhatsApp v EDPB (18 February 2026).
- Freevacy, EDPB adopts A.65 rulings against Meta, DPC to ban targeted ads in Jan (7 December 2022).
- Law Society Gazette, GDPR not useful for systemic issues - Dixon (21 May 2026).
- noyb, Irish DPC greenlights Facebook's GDPR bypass (13 October 2021).
- noyb, Irish DPC removes noyb from GDPR procedure - Criminal report filed (23 November 2021).
- noyb, Second Advent Reading from Facebook/DPC Documents (4 December 2021).
- TechCrunch, Facebook's lead EU privacy watchdog accused of corruption (22 November 2021).

Scholarship and Policy Literature

- 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 <https://doi.org/10.1093/cybsec/tyae017> accessed 14 July 2026.
- Paul Craig, *EU Administrative Law* (3rd edn, OUP 2018).
- Paul Craig, Shared Administration, Disbursement of Community Funds and the Regulatory State, in Herwig C H Hofmann and Alexander H Turk (eds), *Legal Challenges in EU Administrative Law: Towards an Integrated Administration* (Edward Elgar 2009).
- Giulia Gentile and Orla Lynskey, 'Deficient by Design? The Transnational Enforcement of the GDPR' (2022) 71(4) *International and Comparative Law Quarterly* 799–830 <https://doi.org/10.1017/S0020589322000355> accessed 14 July 2026.
- European Law Institute, *Simpler, Fairer, More Effective - Towards a Targeted Revision of EU Data Protection Law* (14 October 2025).
- Hans Graux, Krzysztof Garstka, Nayana Murali, Jonathan Cave and Maarten Botterman, *Interplay between the AI Act and the EU Digital Legislative Framework* (European Parliament, PE 778.575, October 2025).
- Herwig C H Hofmann, Gerard C Rowe and Alexander H Turk, *Administrative Law and Policy of the European Union* (OUP 2011).
- Herwig C H Hofmann, *Multi-Jurisdictional Composite Procedures - The Backbone to the EU's Single Regulatory Space* (University of Luxembourg Law Working Paper No 003-2019).
- Marcus Klamert, *The Principle of Loyalty in EU Law* (OUP 2014).
- Lisette Mustert, *Too Complex to Work? The GDPR Procedural Regulation* (REALaw.blog, 10 April 2026).
- Lisette Mustert and Cristiana Santos, 'The European Data Protection Board—a (non)consensual and (un)accountable role?' (2025) 59 *Computer Law & Security Review* 106217 <https://doi.org/10.1016/j.clsr.2025.106217> accessed 14 July 2026.
- Marta Simoncini, *The Separation of Powers and the Administrative Branch in the European Union* (2025) 23 *International Journal of Constitutional Law* 923.
- Mary-Rose McGuire and Hans Schulte-Nölke, *Different Legal Methodologies of Enforcement of Key EU Digital Laws Structures: Toolbox for the Enforcement of the Digital Rulebook* (European Parliament, PE 772.650, June 2026) https://www.europarl.europa.eu/RegData/etudes/STUD/2026/772650/ECTI_STU%282026%29772650_EN.pdf accessed 14 July 2026.
- Luca Bolognini, Tommaso Bonetti and Enrico Guarnieri, 'The "Super-Powers" of the European Data Protection Board (EDPB) and the Principle of Due Administrative Procedure' (2025) 1 *Diritto, Economia e Tecnologie della Privacy* <https://doi.org/10.5281/zenodo.14222793> accessed 14 July 2026.
- Giovanni De Gregorio and Anna Vicinanza, 'The Enforcement of European Digital Regulation: Overlaps and Pathways' (2026) *Yearbook of European Law* yeag002 <https://doi.org/10.1093/yel/yeag002> accessed 14 July 2026.
- Paul De Hert and Paweł Hajduk, 'EU Cross-Regime Enforcement, Redundancy and Interdependence: Addressing Overlap of Enforcement Structures in the Digital Sphere after Meta' (2024) *Technology and Regulation* 291–308 <https://doi.org/10.2139/ssrn.5048153> accessed 14 July 2026.