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Regulation vs Innovation: the Challenges of Simplifying EU Digital Law

Editorial

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The European Union's regulatory framework for the digital sector, built over a decade of intensive 'actification',[1] is now under scrutiny for creating excessive red tape that arguably stifles EU innovation and compromises global competitiveness. Following the Draghi report[2] and echoing the new mantra of 'simplification', the Commission has proposed two sweeping 'Digital Omnibus' regulations – one general, one focused on AI – to streamline the legislative landscape.[3]

The proposed reforms address recognised overlaps and inconsistencies. The general Digital Omnibus aims to consolidate significant data legislation, including the Free

[1] Vagelis Papakonstantinou and Paul De Hert, 'The Regulation of Digital Technologies in the EU: The Law-Making Phenomena of "Act-Ification", "GDPR Mimesis" and "EU Law Brutality"' [2022] Technology and Regulation 48.

[2] Mario Draghi, 'The Future of European Competitiveness' (2024) <https://commission.europa.eu/document/download/97e481fd-2dc3-412d-be4c-f152a8232961_en>.

[3] EU Commission, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2016/679, (EU) 2018/1724, (EU) 2018/1725, (EU) 2023/2854 and Directives 2002/58/EC, (EU) 2022/2555 and (EU) 2022/2557 as regards the simplification of the digital legislative framework, and repealing Regulations (EU) 2018/1807, (EU) 2019/1150, (EU) 2022/868, and Directive (EU) 2019/1024 (Digital Omnibus) 2025 [COM(2025) 837 final]; EU Commission, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) 2024/1689 and (EU) 2018/1139 as regards the simplification of the implementation of harmonised rules on artificial intelligence (Digital Omnibus on AI) [COM(2025) 836 final].

Flow of Data Regulation, Open Data Directive, and Data Governance Act, into a recalibrated Data Act. This effort prioritises standardisation and simplification, particularly for Small and Medium Enterprises (SMEs). Furthermore, a long-awaited update to the digitally 'prehistoric' e-Privacy Directive promises to modernise cookie rules, potentially allowing users to set persistent preferences in their browsers.

Despite the welcome consolidation, several proposals risk creating legal uncertainty. The Digital Omnibus plans to amend the GDPR, introducing a 'reasonableness of identification' threshold for personal data. Data where a controller lacks a reasonable possibility of identification would be deemed anonymous, a proposal critics fear could inflate the relativity of the personal data concept. Similarly contested is the proposal to restrict the data subject's right to access to only circumstances related to personal data protection. This could undermine its routine use in broader legal disputes, making it difficult to enforce the right in practice.

The recently adopted AI Act is also targeted by a separate Digital Omnibus on AI, which seeks to introduce post-marketing monitoring flexibility and clarify the interplay with other EU law. Alarmingly, this proposal plans to reduce Member State obligations for promoting digital literacy. Practitioners warn that imposing new rules so soon after the Act's adoption exacerbates uncertainty during the crucial implementation phase.

The EU has rightly prided itself on establishing a robust regulatory framework for the digital age, ensuring that fundamental rights are protected and the internal market functions effectively. This body of law, while ensuring European values prevail, has grown exponentially, creating complexity that now risks hindering the very innovation it seeks to govern. The current push for simplification, therefore, represents a critical pivot point. It is not merely an exercise in rearranging statutes, but a strategic effort to transform the EU's normative power into a powerful engine for domestic economic growth and technological leadership.

The core challenge for the Commission is to demonstrate that these proposals constitute a genuine effort to eliminate red tape and operational friction, rather than an implicit lowering of high-held standards. A successful Digital Omnibus must prove that it can consolidate legal obligations, increase clarity, and reduce compliance costs – especially for SMEs and startups – without compromising the foundational protections afforded by the GDPR and other landmark acts. The aim is clear: to ensure the EU's regulatory framework for the digital economy is not just a standard-setter, but a catalyst for innovation 'Made in Europe'.

The third EJLT issue of 2025 opens with an original article, entitled '**Fundamental Rights Impact Assessments in the EU's AI Act: A teleological and contextual analysis of the obligations of deployers'**, by Eduardo Gill-Pedro. This paper focuses on the mandatory Fundamental Rights Impact Assessments (FRIAs) required of public sector bodies deploying AI systems, as established by Article 27 of the European Union's Artificial Intelligence Act (AI Act). The article explores the Act's contrasting regulatory principles and dissects the difference between the comprehensive harmonisation applied to high-risk AI *developers*, which primarily serves internal market goals, and

the lower minimum harmonisation level the FRIA requirement imposes on public *deployers*. The author ultimately finds that choices made by governmental entities – such as electing not to deploy an AI system or undertaking an impact review that surpasses the requirements of Article 27 – remain beyond the reach of EU legislation. Citing precedent from case law concerning the free movement of goods, these decisions are likened to mere 'selling arrangements' and are therefore immune to challenges from impacted AI providers based on internal market or fundamental rights law.

Our second article, by Will Mbioh, is entitled **'Social Media Addiction, Behaviourism, and the Limits of the Digital Services Act**'. The paper challenges the Digital Services Act's (DSA) framework for addressing compulsive platform use, asserting that its focus on interface mechanics (e.g., autoplay, infinite scroll) is an oversimplified, behaviourist interpretation. This approach, the author contends, is both logically inconsistent and fundamentally incomplete, as it neglects the complex array of psychological, social, and structural factors that underpin problematic usage. To develop a more robust solution, the article advocates for coupling targeted design regulation – such as enabling a user's 'right not to be disturbed' – with proactive, systemic interventions. These upstream measures include integrating mental health support and crisis pathways into educational settings, fostering community programs to combat loneliness, and implementing broader policies that alleviate social precarity. This two-pronged strategy aims not only to limit platform features but also to diminish the root vulnerabilities that amplify the risk of problematic digital engagement.

Our third piece is a commentary by Daniel Morgan, entitled **'Advancing Legal Education: Integrating Space Law into Postgraduate Curricula in International Governance and Commercial Law'**. The paper argues that the present state of space law is fundamentally linked to its origins in the Cold War era's foundational assumptions, an approach now misaligned with contemporary space activities. While the 1967 Outer Space Treaty forms the legal basis, its primary focus on sovereign states creates significant regulatory gaps concerning burgeoning commercial and non-state ventures (e.g., satellite constellations and lunar resource extraction). This commentary advocates for the formal incorporation of space law into postgraduate legal studies, specifically within curricula dedicated to international governance and commercial regulatory frameworks. The argument is that without this curricular evolution, future legal professionals will lack the necessary expertise to navigate the field's increasing complexity. The analysis identifies key developments and legal patterns, detailing both the imperative for legal education to modernise and the pedagogical hurdles involved in integrating this distinct area of law.

This issue also includes a **review** by Ksenia Lavrenteva of **Ryan Calo's book *Law and Technology: A Methodical Approach* (Oxford University Press 2025).**

We extend our sincere gratitude to all our contributors and readers. It has been a pleasure engaging with so many insightful authors over the past year. Crucially, we offer a special thank you to our **invaluable peer reviewers**, whose dedicated and

time-intensive efforts – an increasingly rare and essential contribution today – make the quality of this journal possible. We hope you find this new issue engaging, and we wish you a very happy and restful festive season!

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