

COMMENTS TO THE EUROPEAN COMMISSION'S PUBLIC CONSULTATION ON THE DIGITAL FITNESS CHECK



SUBMITTED BY CONSUMER ASSOCIATION IUS OMNIBUS

I. IUS OMNIBUS

Ius Omnibus (Ius), with registered office at Second Home Lisboa, Mercado da Ribeira, Av. 24 de Julho, 1200-479 Lisbon, Portugal, is a non-profit association, created in March 2020, to promote and defend the rights and interests of consumers in the European Union. We are a consumer protection association registered and recognised by the Portuguese Government and by the European Commission as a qualified entity under Directive (EU) 2020/1828, and have filed several collective actions in the field of consumer protection.

Ius Omnibus considers it essential to participate in this public consultation. The Digital Fitness Check should not focus only on overlapping obligations for businesses. It should also identify where the interaction of EU digital rules makes it harder for consumers to understand their rights, know which authority is competent, obtain timely redress, and benefit from consistent protection across the Union. Simplification should therefore avoid fragmentation, duplication and enforcement gaps, while fully preserving substantive consumer rights, transparency obligations and access to remedies. In addition, the interaction among the various European laws governing the digital environment, including data protection, consumer protection, and competition law, directly impacts businesses operating across Member States.

The Digital Fitness Check questionnaire focuses primarily on cumulative administrative burdens, reporting obligations, compliance costs, overlap between legislative instruments, and the impact on SMEs. These are issues that directly affect businesses. However, the consultation is formally addressed to all stakeholders, including consumer organisations. The current Digital Rulebook has a significant impact on consumers who engage in the digital world: the density and complexity

IUS OMNIBUS

Avenida 24 de Julho - Second Home Lisboa Mercado da Ribeira,
1200-479 Lisbon

Tel: +351 910 977 799

Email: info@iusomnibus.eu

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of overlapping rules can make it harder for consumers to identify which rights apply, which authority to turn to, and how to obtain effective redress. Ius Omnibus therefore considers it essential to ensure that the consumer perspective is fully reflected in this exercise.

II. Public consultation

The EU Commission is determined to achieve tangible results to make the EU more competitive, not least through an ambitious simplification agenda. Digital rules have created the framework for a fair business environment in the EU. These rules have created a genuine single market for digital services. However, various reports indicate that many rules can negatively affect competitiveness. There is therefore a need for rapid, visible improvement for people and businesses. With this in mind, the Commission has taken a first step towards simplifying the digital rulebook with the digital Omnibus proposal. The digital fitness check is a second step to test the complementarity, efficiency and effectiveness of the rulebook. It examines how the digital rulebook affects and supports the EU's competitiveness, with a particular focus on strategically important areas. It examines the coherence among different laws, potential overlaps and gaps, and the cumulative effect of Regulations, especially on SMEs. The aim is to ensure that the regulatory framework remains effective, proportionate and future-proof, while maintaining a high level of fundamental rights protection. It also examines where simplification, better coordination, and reductions in administrative burdens are possible. With this public consultation, the Commission aims to learn about stakeholders' views and experiences regarding the interaction among EU digital rules and to gather information on the cumulative effects of these rules on people, businesses, and governments.¹

These comments are based on the Guidelines of the European Commission on the Digital Fitness Check, the questions posed by the Commission and relevant EU digital legislation, including the General Data Protection Regulation, the Digital Services Act, the Artificial Intelligence Act and the Digital Markets Act. While the Guidelines sometimes propose improvements, their main purpose is to describe existing rules and regulatory frameworks. Therefore, in this paper, we focus on areas for improvement and practical challenges identified both in the Guidelines and through observations.

¹ This follows from Chapter 1 of the European Commission's Digital Omnibus proposal, as well as from the Call for Evidence for an evaluation/Fitness Check concerning the Digital Fitness Check.

III. General reflection on the consultation on the EU digital framework

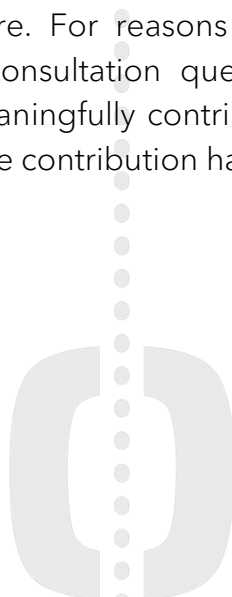
IUS Omnibus welcomes the European Commission's initiative to evaluate the coherence and cumulative effects of the EU digital regulatory framework. As part of this exercise, the practical consequences of regulatory fragmentation for consumers include confusion about applicable rights, uncertainty about competent authorities, delays in redress, and inconsistent outcomes across Member States. In addition, the fitness check should explicitly address not only regulatory burdens on businesses, but also the fitness check could have been strengthened by explicitly including the interaction between the existing regulatory framework and the recently proposed Digital Omnibus measures.

Furthermore, the Commission should ensure that simplification does not undermine core objectives such as a high level of consumer protection. The questionnaire focuses primarily on administrative burdens and on businesses' compliance. The Commission should adopt a more balanced approach, with greater attention to the experiences of consumers and consumer organisations. As a governing principle, simplification should aim to address duplication, fragmentation, and procedural inefficiency, not substantive consumer safeguards. This non-regression principle should guide the entire fitness check exercise and any subsequent legislative action.

The Commission should also assess how the cumulative effects of the EU digital rulebook affect vulnerable consumers, including minors, elderly users and individuals with limited digital literacy. Complex regulatory frameworks and fragmented complaint mechanisms may disproportionately affect these groups, who may face greater difficulties in identifying their rights and accessing remedies. Ensuring that simplification efforts improve accessibility and usability for all consumers should therefore remain a key objective of the fitness check.

IV. Comments

In this section, comments will be provided in response to the questions posed by the European Commission. For ease of reference, this submission follows the structure of the consultation questionnaire. For reasons of structure and relevance, this submission focuses on those consultation questions where comments from a consumer perspective could meaningfully contribute to the discussion. Questions that did not allow for a substantive contribution have therefore not been addressed.



1. Positive impact of EU Digital Legislation

(Addressing the second paragraph of the consultation questions regarding the opportunities supported by the digital rulebook.)

First of all, the EU digital rulebook has brought about several positive changes. It has significantly increased legal certainty and harmonisation between Member States. The creation of directly applicable regulations has reduced fragmentation and facilitated the delivery of digital services. The establishment of a common compliance framework has increased trust in digital markets, strengthened consumer protection and supported market access for EU-based operators, ensuring that consumers benefit from comparable rights regardless of their Member State of residence.

The regulatory clarity provided by horizontal instruments has also enabled businesses to scale across multiple Member States without facing divergent national regimes.

In particular, the General Data Protection Regulation has created a uniform data protection framework and empowered consumers with enforceable data rights. The Digital Services Act has clarified platform governance and modernised intermediary liability rules. The Artificial Intelligence Act introduces a risk-based compliance system designed to safeguard fundamental rights while fostering innovation.

In short, from a consumer perspective, these instruments have increased legal certainty, strengthened transparency, and improved redress mechanisms. However, the interaction between these instruments requires careful coordination to ensure that consumers can effectively understand their rights, identify the competent authority, and access timely and consistent remedies.

2. Areas for Improvement in Digital Law

(Addressing the consultation question on areas of digital law where there is scope for making key improvements.)

While the EU digital rulebook has significantly improved harmonisation, the increasing density of horizontal digital legislation has created a complex landscape that affects not only business compliance but also consumers' ability to navigate their rights. The Commission should improve overall coherence between instruments, particularly where similar obligations, such as transparency, risk assessment, and documentation, apply across multiple regulatory frameworks. Definitions across the regulations should be harmonised and clarified where necessary, without compromising the level of consumer protection they provide. Further clarification of

the interaction between horizontal instruments and sector-specific rules should enhance legal certainty and reduce interpretative ambiguity² for both businesses and consumers.³

From a consumer perspective, room for improvement lies primarily in ensuring that simplification enhances the clarity of rights, the consistency of enforcement and the accessibility of remedies. Due to the volume and complexity of digital regulation, consumers may struggle to determine which legal framework applies in a specific case of digital damage, which authority is competent, and what remedies are available. This fragmentation can lead to delays in redress, inconsistent outcomes across Member States, and reduced transparency. Greater coherence between instruments should therefore enhance accessibility and trust for consumers throughout the Union.

The interaction between competition law and consumer protection frameworks also deserves attention. Instruments such as the Digital Markets Act address structural market imbalances, while consumer protection law focuses on individual rights and fairness in commercial practices. Greater coordination between these areas of law could improve the effectiveness of enforcement against unfair digital practices, particularly where market power and consumer harm are closely intertwined.

2.1 Overlaps or conflicts with sector-specific EU legislation

(Addressing the consultation question on overlaps, conflicts, or redundancies between the EU digital legislation and sector-specific EU regulations.)

Overlaps may arise where horizontal digital legislation intersects with sector-specific frameworks, particularly in areas such as data governance, cybersecurity, consumer protection and financial regulation.

While objectives may differ, compliance processes overlap in practice. This leads to parallel reporting, documentation or risk assessment requirements. Greater alignment or cross-referencing mechanisms could help streamline compliance efforts.

One example of these possible overlaps, where horizontal digital legislation intersects with sector-specific frameworks, is cumulative regulatory pressure. In its proposal for the digital omnibus, the European Commission acknowledges that multiple rules can together lead to:

² This follows from Chapter 1 of the European Commission's proposal for the Digital Omnibus.

³ Digital Omnibus proposal pages 1 and 2.

- Overlapping reporting obligations.
- Duplicate documentation requirements.
- Multiple risk analyses.
- Administrative burdens.
- Complex governance structures.

The proposal, therefore, emphasises the interaction between horizontal rules and the possible overlaps that may arise from it.⁴

Consumers face concrete uncertainty when multiple legal regulations apply simultaneously. For example, data-related issues may fall under both the GDPR and the DSA transparency rules, leaving consumers uncertain about which framework governs their complaint, which authority to address, and what standard of protection applies. While overlap may increase protection in some cases, it can also lead to enforcement fragmentation, delays in consumer redress and inconsistent interpretation by authorities. The Commission should ensure clearer cross-referencing and should mandate joint guidance between supervisory authorities on recurring areas of overlap.

2.2 Overlaps or conflicts with national legislation

(Addressing the consultation question on overlaps, conflicts, or redundancies between the EU's digital rules and legislation issued by Member States.)

The proposal shows the existing divergence in national enforcement and interpretation. An example of this can be found in paragraph 40 of the European Commission's proposal for the Digital Omnibus. This paragraph explains that, in the current situation, when a data protection impact assessment is required under Article 35 of the GDPR, national privacy authorities (supervisory authorities) draw up a list of processing types that require such an assessment. To facilitate compliance for businesses and ensure regulatory consistency across the EU, the European Commission outlines its intention to establish an EU list in this paragraph. This list should clarify which processing operations require an assessment and will be established by the European Commission. This example shows that rules on digitisation have been harmonised, but enforcement has not. This could have consequences such as:

- Legal uncertainty.

⁴ Digital Omnibus proposal p.1-18.



- Cross-border complexity.
- Unequal levels of protection across Member States.
- Forum shopping by digital operators.

While the Rulebook has led to harmonization on the one hand, significant differences between Member States persist. Differences in interpretation can have direct consequences for consumers: a consumer in one Member State may receive a different level of protection, face different procedural requirements, or obtain a different outcome than a consumer in another Member State confronting the same digital practice.

The Commission should establish enhanced coordination mechanisms and consistent interpretative guidance to mitigate these divergences and ensure that consumers benefit from equivalent protection across the Union.⁵

2.3 Obsolete or outdated rules

(Addressing the consultation question on rules or provisions in the digital area that might no longer be up to date, or that might be obsolete.)

Given the rapid pace of technological development, periodic review mechanisms are essential to ensure that digital legislation remains future-proof.

Documentation requirements or procedural obligations may require regular reassessment to ensure they remain proportionate and aligned with evolving technological realities.

The European Commission confirms this idea, among other things, in the aforementioned example from paragraph 40 of the proposal for the Digital Omnibus. The European Commission wants to review the lists with the model and method at least every three years and adapt them to new technologies and changes.

In addition, in the Omnibus, the European Commission emphasises the importance of abolishing outdated rules, in particular Regulation (EU) 2018/1807 (the Free Flow of Non-Personal Data Regulation - FFDR).⁶

The Commission should periodically review whether obligations remain effective in practice, to ensure that consumers receive adequate and up-to-date protection under digital laws as technologies evolve.

⁵ Digital Omnibus proposal p1-19.

⁶ Digital Omnibus proposal, p4 and 5.



2.4 Negative effects on cross-border trade (EU & non-EU)

(Addressing the consultation questions on negative effects from the application of digital EU legislation regarding cross-border trade.)

While harmonisation has strengthened the Digital Single Market, cumulative compliance costs may disproportionately affect smaller market participants and reduce their ability to scale across borders.

Additionally, divergences in enforcement or interpretation may create indirect barriers to cross-border digital services.

The demand for reducing these negative effects on cross-border trade is evident in the European Commission's plans to lower costs for businesses and governments, ensure more flexible treatment of medium-sized companies, eliminate duplicate and overlapping rules, and establish a central reporting system.⁷

From a consumer perspective, the applicability of various pieces of EU digital legislation has also significant consequences for cross-border trade. Strong consumer protection supports trust in cross-border digital services. However, inconsistent enforcement undermines equal consumer safeguards and effective cross-border redress: consumers may face different procedural requirements, different response times, and different outcomes depending on the Member State in which they seek protection. Simplification should enhance uniform enforcement rather than dilute standards.

2.5 Incoherencies in definitions, concepts or scope

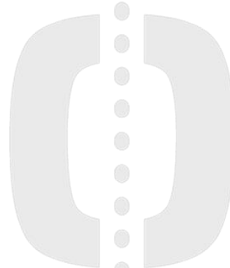
(Addressing the consultation question on incoherent, unclear terms of concepts used across different laws, definitions, or the scope of the rules.)

Certain definitions and conceptual frameworks differ across digital instruments, even where they address related subject matter.

Enhanced terminological alignment or clearer cross-referencing between instruments could improve regulatory coherence and reduce compliance complexity.

An example of such unclear definitions is the concepts of robustness and access control in Article 36 of the Data Act. These concepts are vaguely formulated, and there is no uniform European standard for them. For consumers, this means that the level of protection they can expect when exercising data access rights may vary

⁷ Digital Omnibus proposal, p. 11.



depending on how individual operators or national authorities interpret these requirements.⁸

An example of a case in which the interpretation of an EU provision was central is the Amsterdam District Court's ruling of 2 June 2025.⁹ The central question was what exactly the definition of the preferred option in Article 27 of the DSA entails: whether it was sufficient for such an option to exist permanently, or whether the choice had to remain permanent until the user changed it. This type of interpretative uncertainty directly affects consumers, who may be subject to different standards of interface design and choice architecture depending on the jurisdiction. The Commission should clarify legal provisions such as these to ensure the uniform applicability of EU legislation across all Member States.

Consumers are not legal experts. Similar concepts are defined differently across the EU digital rulebook. The practical consequences for consumers are significant: they may receive different notices for similar problems, face opaque information about which obligation protects them, encounter different informational standards across platforms, and find it difficult to compare available remedies. While distinctions between instruments are often justified by their specific regulatory objectives, the Commission should assess how these differences affect consumers in practice and address unjustified complexity.

For example, instruments such as the Digital Services Act, the Digital Markets Act, the General Data Protection Regulation and the Artificial Intelligence Act rely on different categories of actors and services. Although these distinctions reflect the specific purposes of each legislative framework, they contribute to a fragmented conceptual landscape that makes it harder for consumers and consumer organizations to identify the applicable regime and the competent authority in each situation.

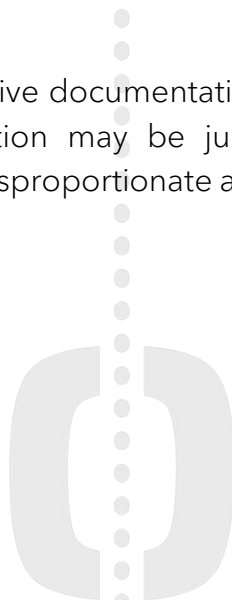
2.6 Duplications and administrative burden

(Addressing the consultation questions on the optimisation of the cumulative impact of rules.)

A central issue concerns cumulative documentation, reporting and risk assessment obligations. While each obligation may be justified separately, together their combined effect may generate disproportionate administrative burdens, particularly for SMEs.

⁸ Digital Omnibus proposal, p.5 par. 16

⁹ ECLI:NL:RBAMS:2025:7253



Therefore, opportunities to streamline documentation requirements, align reporting formats, and introduce interoperable digital submission systems should be explored.¹⁰

From a consumer perspective, reducing unnecessary administrative burdens is welcome, if simplification does not:

- Limit transparency obligations.
- Weaken complaint-handling mechanisms.
- Reduce data access rights.

Efficiency gains should focus on supervisory coordination and procedural streamlining, not on reducing substantive safeguards. The Commission should ensure that any simplification measure is assessed against its impact on consumer protection, transparency and access to remedies.

2.7 Reporting obligations and complaint-routing architecture

(Addressing the consultation questions on reporting obligations, their importance for transparency and accountability, and the possibilities for rendering the forms and ways in which reports can be received more efficiently.)

Reporting obligations are essential for accountability and enforcement. However, their frequency, format, and scope should be reassessed to ensure proportionality and avoid requiring similar information to be submitted to multiple authorities in different formats. Centralized or interoperable reporting interfaces could significantly enhance efficiency for both authorities and regulated entities.

Consolidation mechanisms should reduce unnecessary duplication while maintaining regulatory oversight. Reporting obligations should remain where they enhance transparency and enable public accountability. In its Digital Omnibus proposal, the European Commission advocates a single-entry point, enabling organizations to comply with their reporting obligations under various directives and regulations by submitting reports via a central interface and to retrieve previously submitted reports.

However, any single entry point or rationalisation of reporting should not be designed solely for business efficiency. The Commission should ensure that such systems also preserve transparency useful to consumers, facilitate the routing and traceability of consumer complaints and reports, and remain accessible to consumer

¹⁰ Digital Omnibus proposal par. 17, 22 and 54.

organisations and other public interest entities.¹¹ Reporting should be understandable to consumers, accessible and standardised.

In addition to reporting obligations addressed to authorities, the Commission should also assess the interoperability of consumer compliant systems across the EU digital rulebook. Consumers currently face multiple entry points to submit complaints (platform reporting mechanisms, national consumer authorities, alternative dispute resolution bodies). Greater interoperability between these systems, including shared complaint-routing protocols and interoperable digital platforms, would significantly improve the accessibility and effectiveness of redress mechanisms for consumers.

3. Governance and Regulatory Coordination

(Addressing the consultation questions on the governance structure applicable to digital rules.)

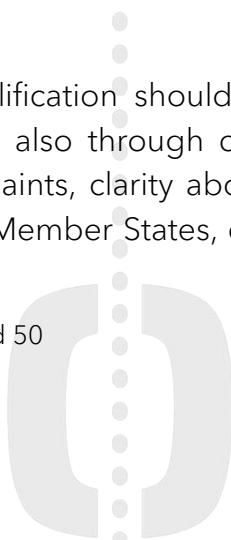
Improved coordination between EU-level bodies and national supervisory authorities is essential to ensuring that harmonised legislation achieves harmonised outcomes in practice. The Commission should pursue the following concrete measures:

First, the Commission should establish a "no wrong door" complaints system. When a consumer submits a complaint to an authority or contact point that lacks competence over the matter, that authority should be required to transfer the complaint promptly to the competent body, without requiring the consumer to restart the process. This mechanism is essential to ensuring that regulatory fragmentation does not translate into practical barriers to redress.

Second, the Commission should establish formal cooperation protocols and clear allocation of competences between data protection authorities, digital services coordinators, consumer protection authorities, competition authorities and, where applicable, AI Act governance structures. These protocols should include binding referral deadlines, designated contact points, criteria for identifying the lead authority, and the possibility of joint enforcement actions in hybrid cases involving multiple regulatory frameworks.

Third, the effectiveness of simplification should be measured not only through compliance cost reductions, but also through consumer-facing metrics: average time to resolve consumer complaints, clarity about which authority is competent, consistency of outcomes across Member States, quality of information provided to

¹¹ Digital Omnibus proposal, par. 49 and 50



users, and effective access to remedies. The Commission should develop and publish such indicators as part of future evaluations of the digital regulatory framework.

Fourth, the Commission should mandate joint guidance from relevant supervisory authorities on recurring areas of regulatory overlap, such as transparency requirements, profiling, recommender systems, data access, dark patterns and high-risk AI applications. Such guidance should be issued not only in technical formats for compliance professionals, but also in accessible formats for consumers and collective enforcement entities.

From a consumer perspective, effective protection relies not only on rules but also on effective and coordinated enforcement. Current concerns include fragmented supervision, parallel EU-level and national authorities, and inconsistent interpretations that produce different outcomes for consumers in different Member States. The Commission should prioritize structured inter-authority cooperation, joint guidance documents and coordinated enforcement strategies to ensure that the harmonised rulebook delivers harmonised protection in practice.

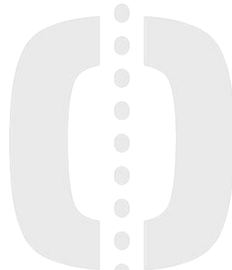
4. Supporting mechanisms beyond the law

(Addressing the consultation questions on the models that support the application of the rules.)

Beyond legislative amendments, practical implementation tools should play a central role in ensuring that the objectives of the EU digital rulebook are effectively realized.

The Commission and relevant supervisory authorities should issue clear and accessible guidance to ensure consistent interpretation of digital legislation across Member States. Given the increasing complexity of the EU digital regulatory framework, interpretative guidance and coordinated recommendations are essential to greater legal certainty for both consumers and market actors.

Consumer awareness and accessibility of rights should be strengthened as a priority. Even where strong legal protections exist, consumers cannot effectively exercise their rights if they lack information about available remedies or complaint mechanisms. The Commission should promote public information initiatives and ensure that complaint procedures are easily accessible, clearly signposted and available in all official languages of the Union.



These supporting mechanisms complement legislative simplification efforts and help ensure that the objectives of the EU digital rulebook, including a high level of consumer protection, are effectively realised in practice.

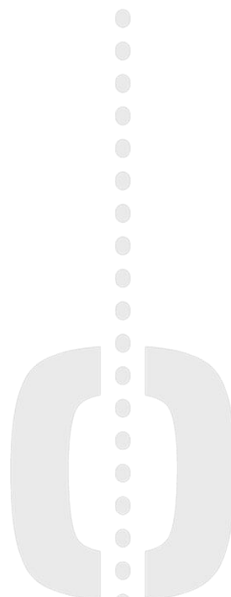
5. Closing remarks

Ius Omnibus welcomes the European Commission's initiative to evaluate the coherence, effectiveness and cumulative impact of the EU digital rulebook through the Digital Fitness Check. The EU digital rulebook has laid the foundation for a strong and harmonised Digital Market. However, as the regulatory framework continues to expand, evaluations such as the Digital Fitness Check should ensure that legislation remains clear, proportionate, and effective in practice, not only for businesses but above all for the consumers it is designed to protect.

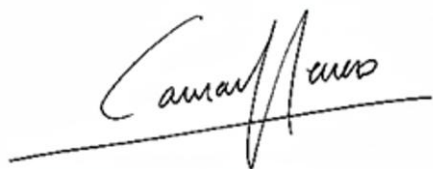
From a consumer protection perspective, simplification efforts should primarily aim to improve clarity, coherence and accessibility of rights, while maintaining the high level of protection that EU digital legislation seeks to guarantee. Strengthening coordination among regulatory instruments, enhancing cooperation among supervisory authorities, and improving practical implementation mechanisms are essential to achieving these objectives. The experiences and perspectives of consumers and consumer organizations must continue to be fully taken into account in future evaluations and regulatory initiatives. From a consumer perspective, the main test for the EU digital rulebook is not whether it is merely lighter to administer, but whether it is easier to enforce, easier to understand, and more effective in delivering real and consistent protection in practice across the Union.

For Ius Omnibus,

Lena Hornkohl, President of Ius Omnibus



Carmen Herrero Suárez, Vice-President of Ius Omnibus



Carmen Estevan de Quesada, Director of Ius Omnibus



IUS OMNIBUS

Avenida 24 de Julho - Second Home Lisboa Mercado da Ribeira,
1200-479 Lisbon

Tel: +351 910 977 799

Email: info@iusomnibus.eu



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