

Kai Zenner

Presentation on:

'The EU Enforcement Gap: How to make the GPAI rules count in practice'

Who am I?

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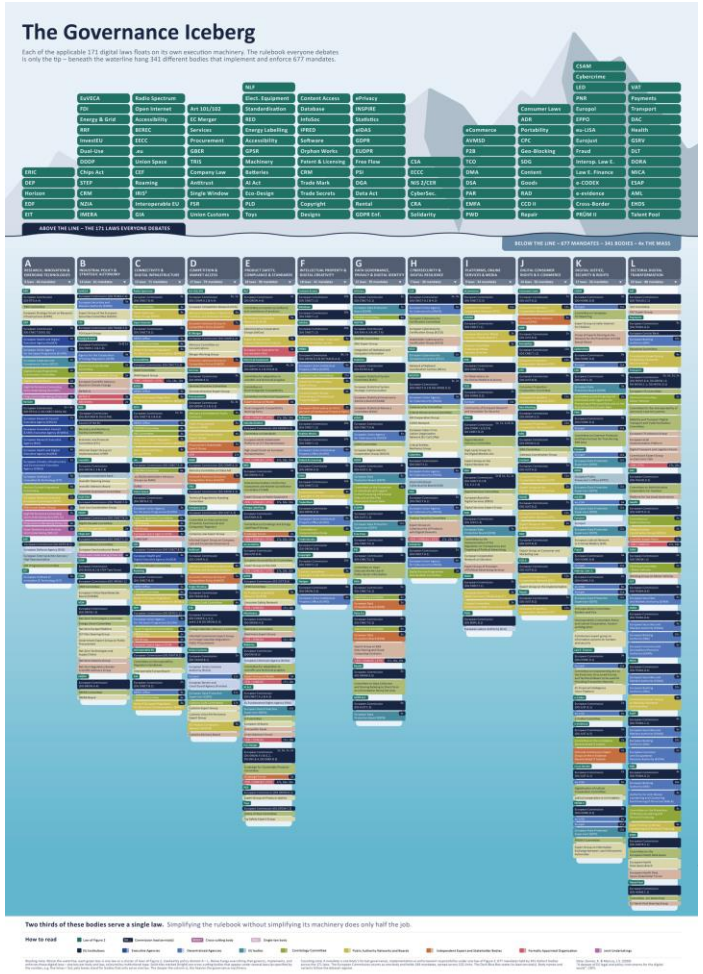
Lots of laws and even more EU bodies – but no single enforcer



The Governance Iceberg, CEPS dataset.

171 applicable EU digital laws. Half of them younger than the GDPR. 89 laws are already back on the drawing board.

341 EU-level bodies implement and enforce them. 2/3 of them serve a single law. Only four areas feature horizontal infrastructures for the digital sphere.

677 governance, enforcement and implementation mandates. Most of the machinery coordinates; enforcement happens often in Member States.

5 laws the Commission enforces directly & exclusively, out of 171. The AI Act is one of them. Shared enforcement with Member States for 7 additional laws.

44 % of EU citizens feel their rights are well protected in the digital world (Eurobarometer, 2025).

Partial compliance has become the norm: 99.93 % of complaints to the Irish DPC are closed without a decision; Google reportedly cleared its €2.4bn fine in fourteen days of business.

Sources: Zenner & Marcus, A dataset of EU legal and policy instruments for the digital world, 5th ed., CEPS (Nov 2026); Eurobarometer 2025 (26,319 respondents); noyb (2021); Nemitz/FEPS (2026).

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Why the Enforcement Gap persists: Five structural causes

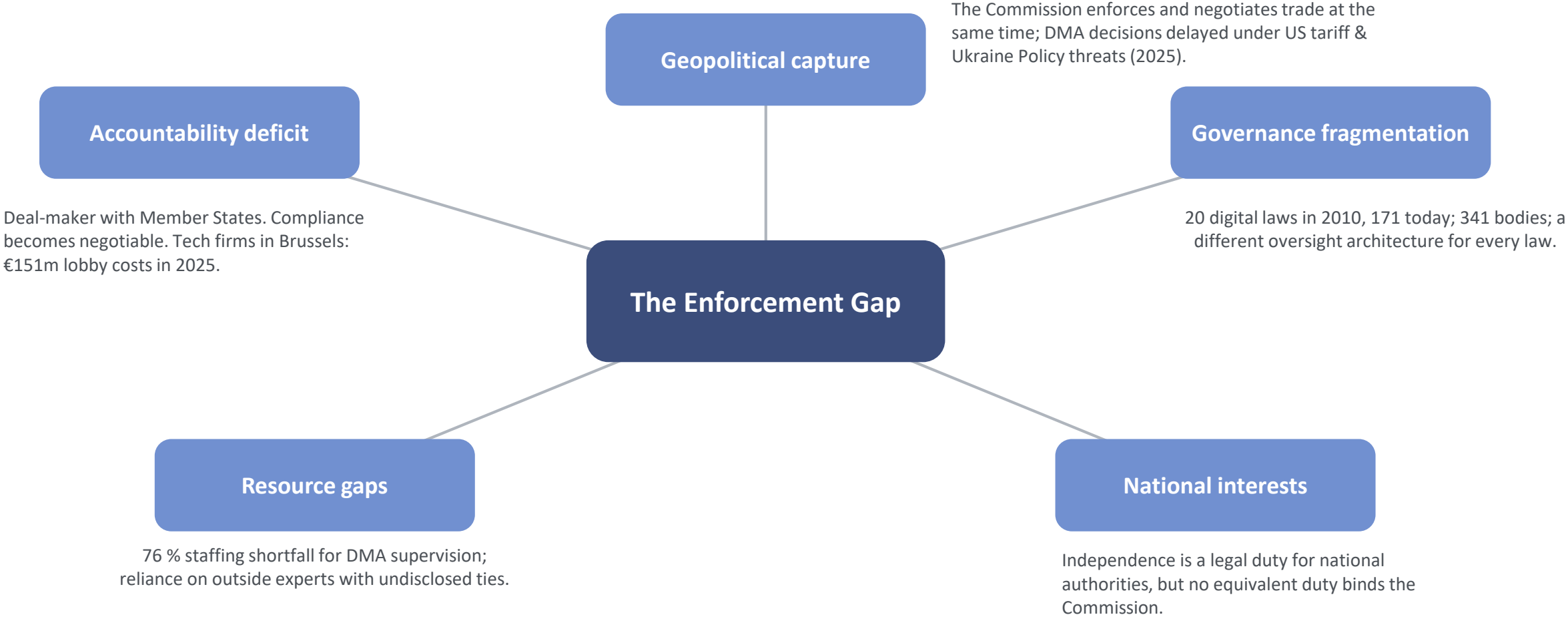


Figure 3 of Zenner & Koomen, Closing the EU Enforcement Gap, Strategy Note.

GPAI on paper: Duties from 2025, enforcement powers from 2026

1 Aug 2024
AI Act in force

Jul–Aug 2025
Code of Practice (10 Jul), Guidelines (18 Jul), training-summary template (24 Jul); duties apply 2 Aug (Art. 53–55, incl. copyright policy)

Jul 2026
Digital Omnibus on AI in force: high-risk delayed, GPAI dates untouched, AI Office scope widened

2 Aug 2026
AI Office enforcement powers: Art. 91–93; fines up to 3 % or €15m (Art. 101)

2 Aug 2027
Grace period ends for models placed on the market before Aug 2025 (Art. 111(3))

2 Aug 2028
Art. 112(5): Commission reviews AI Office powers and resources

2 Aug 2031
Art. 112(13): assessment of enforcement structure and need for a Union agency

Twelve months between the first copyright duties and the first enforcement powers. The AI Act is one of only five digital laws the Commission enforces directly.



Code of Practice: copyright chapter (10 Jul 2025)

Necessary step, not a breakthrough

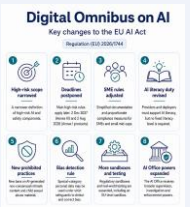
- Five commitments: copyright policy; lawful access only (no paywall circumvention, piracy sites excluded); respect robots.txt and other reservation protocols; curb infringing outputs; contact point and complaints.
- No licensing commitment; third-party dataset due diligence dropped from the final text; complaints may be refused; signing is not copyright compliance.
- Signed by most frontier providers; Meta refused, XAI only partially.



GPAI Guidelines, C(2025) 5045 (18 Jul 2025)

A benchmark and a gap

- Clear threshold: 10^{23} FLOP; notification duties along the lifecycle.
- Open-source exemption (Art. 53(2)) does not lift the copyright-policy and training-summary duties.
- Rules apply from Aug 2025, enforcement only from Aug 2026.



Digital Omnibus on AI (in force from Jul 2026)

More scope, same resources

- High-risk duties pushed to Dec 2027 / Aug 2028; GPAI dates and copyright duties untouched.
- AI Office now also supervises GPAI-based systems of the same provider and AI inside VLOPs / VLOSEs.
- No matching staff or budget attached.

In practice: Late, Reactive and Under-Ressourced

2 AUG 2026

The enforcement powers are applicable. The AI Office spent the first year spent in a collaborative mode. No formal act for four weeks.

LATE AUG / SEPT 2026

First Art. 91 requests for information concerned transparency and copyright: 30+ providers had published no training-content summary (Art. 53(1)(d)) a full year after the duty applied.

14 OCT 2026

Safety and security requests to frontier providers announced (Virkkunen, Dublin): security practices, external evaluation, post-market monitoring. Trigger: AI agents breaching external systems during testing.

STILL MISSING

Fining procedure still in consultation (to 9 Nov 2026); no Art. 92 evaluation, no Art. 93 measure. Nobody checks copyright policies, crawlers or summaries. Rightholders have no complaint route to the AI Office: Art. 89(2) serves downstream providers only.

CAPACITY

One small unit for the most capable models in the world; a thin pool of independent evaluators; at least 160 GPAI supervisory staff needed by 2030 (Pour Demain). Huge gap towards UK's AI Security Institute (AISI).

COURTS

Enforcement happens in court: GEMA v OpenAI (LG München I, 11 Nov 2025: memorised lyrics are reproductions; on appeal); Kling v OpenAI pending; Like Company v Google (C-250/25): AG Szpunar, 3 Nov 2026, three conditions for lawful training.



Our 2024 blueprint for an effective EU AI Office: still the benchmark.



State of the Union, 16 Sept 2026: a promise to lead on AI safety.

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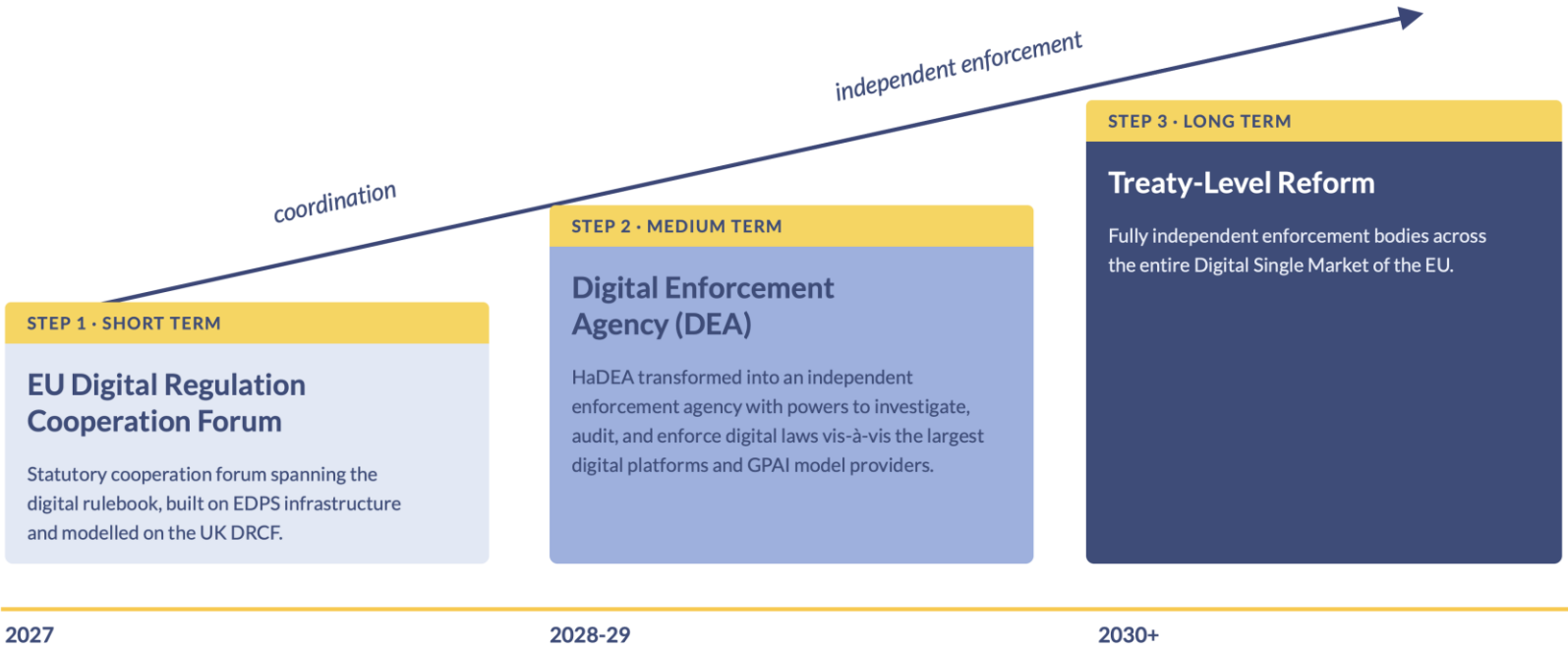
The GPAI enforcement gap has the same five structural causes

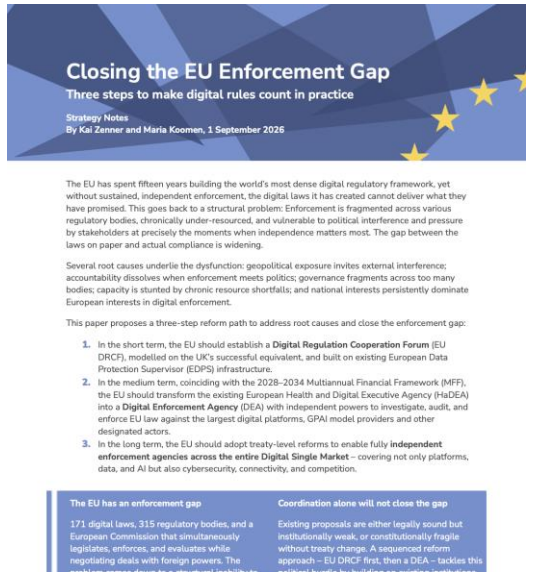
Geopolitical capture	Trade and tech policy run through one institution. DMA decisions were delayed under US tariff threats in 2025; frontier labs lobbied the Digital & AI Omnibus; the Code's copyright chapter lost its due-diligence duty on third-party datasets before the final text. The EU institution that negotiates with Washington supervises the US tech giants.
Accountability deficit	The AI Office is a Commission directorate. It wrote & negotiated the AI Act, ran the Code drafting (copyright chapter included), designates systemic-risk models, enforces, and in 2028 evaluates itself (Art. 112(5)). On copyright it supervises a policy, not the infringement: that stays with national courts.
Governance fragmentation	Models with the AI Office, AI systems with 27 national authorities, AI inside platforms with the DSA teams; copyright with 27 court systems and 27 transpositions of Art. 4 CDSM. EUIPO and collecting societies sit outside the AI Act governance; no EU standard or registry for reservations.
Resource gaps	One unit for the most capable models in the world with only a few independent evaluators. Nobody audits crawler behaviour, copyright policies or training summaries. At least 160 GPAI supervisory staff would be needed by 2030. The DMA precedent: a 76 % staffing shortfall.
National interests	Member States shield champions (see the 2023 trilogue fight over GPAI tiers, which was also a fight over training-data transparency). Uneven designation of national authorities. Regulatory sandboxes delayed to August 2027.

The AI Act is one of only five digital laws the Commission enforces directly. If the gap appears also here, the problem is systemic.

A sequenced answer: Coordinate, then enforce, then entrench

Figure 6: A phased reform approach




Closing the EU Enforcement Gap
Three steps to make digital rules count in practice
Strategy Notes
By Kai Zenner and Maria Koomen, 1 September 2026

The EU has spent fifteen years building the world's most dense digital regulatory framework, yet without sustained, independent enforcement, the digital laws it has created cannot deliver what they have promised. This goes back to a structural problem: Enforcement is fragmented across various regulatory bodies, chronically under-resourced, and vulnerable to political interference and pressure by stakeholders at precisely the moments when independence matters most. The gap between the laws on paper and actual compliance is widening.

Several root causes underlie the dysfunction: geopolitical exposure invites external interference; accountability dissolves when enforcement meets politics; governance fragments across too many bodies; capacity is stunted by chronic resource shortfalls; and national interests persistently dominate European interests in digital enforcement.

This paper proposes a three-step reform path to address root causes and close the enforcement gap:

1. In the short term, the EU should establish a **Digital Regulation Cooperation Forum** (EU DRCF), modelled on the UK's successful equivalent, and built on existing European Data Protection Supervisor (EDPS) infrastructure.
2. In the medium term, coinciding with the 2028–2034 Multiannual Financial Framework (MFF), the EU should transform the existing European Health and Digital Executive Agency (HaDEA) into a **Digital Enforcement Agency** (DEA) with independent powers to investigate, audit, and enforce EU law against the largest digital platforms, GPAI model providers and other designated actors.
3. In the long term, the EU should adopt treaty-level reforms to enable fully **independent enforcement agencies across the entire Digital Single Market** – covering not only platforms, data, and AI but also cybersecurity, connectivity, and competition.

The EU has an enforcement gap

171 digital laws, 315 regulatory bodies, and a European Commission that simultaneously legislates, enforces, and evaluates while negotiating deals with foreign powers. The

Coordination alone will not close the gap

Existing proposals are either legally sound but institutionally weak, or constitutionally fragile without treaty change. A sequenced reform approach – EU DRCF first, then a DEA – tackles this

Zenner & Koomen, Closing the EU Enforcement Gap: Three steps to make digital rules count in practice, Strategy Note, 1 Sept 2026.

Each step is necessary – none sufficient alone. We proposed a strict sequence: trust and shared methods first, independent powers second, a treaty basis last.

Step One (2027): An EU Digital Regulation Cooperation Forum

Step One applied to GPAI and copyright: what an EU DRCF would do

LEGAL BASE	Statutory forum created through a targeted Digital Governance Omnibus, alongside the Q1 2027 Digital Fitness Check. Modelled on the GDPR's EDPB with the EDPS as secretariat. The Commission chairs without voting rights.
MEMBERS	AI Board and AI Office · EDPB / EDPS · European Board for Digital Services · DMA High-Level Group · ENISA · BEREC · ECN · Joint ESA Committee; FRA and Europol as observers. For copyright and media: EUIPO and the European Board for Media Services (EMFA) at the table.
FOR COPYRIGHT	One shared method for checking training summaries, copyright policies and crawler behaviour (Art. 53(1)(c)–(d)) · an EU standard and registry for machine-readable reservations, run with EUIPO · joint handling of cross-regime cases: press content in chatbot answers (C-250/25), AI inside VLOPs, the antitrust probe into Google's AI Overviews.
GLOBAL LINK	Direct access to the International Network for Digital Regulation Cooperation (UK, NL, IE, AU, CA) and a bridge to the international network of AI safety and evaluation institutes.
LIMIT	No binding powers: it cannot neutralise capture or fix resources. But it would help to build the trust, data and methods that Step Two needs. Its failure would show exactly where independent capacity is indispensable.

Source: Zenner & Koomen (2026), Step One and Figure 7.

Step Two (2028–2034): A Digital Enforcement Agency for GPAI

Step Two applied to GPAI and copyright: what an EU DEA would do

LEGAL BASE	Founding act under Art. 114 TFEU turns HaDEA, an executive agency, into a decentralised agency with enforcement powers. Complemented by targeted amendments to the AI Act, DMA, DSA, GDPR and Data Act. The political vehicle is the 2028–2034 MFF. Meroni satisfied via the Short Selling judgment (C-270/12) and the AMLA precedent.
GPAI DOMAIN	"GPAI models and data processing", one of four enforcement domains; 10–14 supervised providers – around 140 staff at AMLA's 10:1 ratio (450–500 in total, 70–80 % redeployed from Commission units). ECAT as the in-house technical base. Training-data transparency and copyright-policy supervision sit in this domain.
DIVISION OF LABOUR	The Commission keeps policy and designation (which models carry systemic risk, Art. 51). The DEA however runs Art. 91–93: information requests, evaluations, measures; fines decided by an executive board; joint supervisory teams with national authorities. Infringement stays with the courts; the DEA checks that policies, crawlers and summaries are what providers claim.
SAFEGUARDS	Non-political leadership (no serving politicians or senior Commission officials; six years of enforcement experience) · fee funding the Commission cannot cut, modelled on the DSA supervisory fee · statutory deadlines with escalation · a complaints right for rightholders, not only downstream providers (Art. 89(2)) · Board of Appeal and General Court.
LEGAL HOOK	Art. 112(5): by 2 Aug 2028 the Commission must report whether the AI Office has sufficient powers and resources; Art. 112(13): by 2031, whether a Union agency is needed. The money is decided earlier, in the 2027 MFF talks: the proposal must be on the table first.

Source: Zenner & Koomen (2026), Step Two, Figures 8 and 9.

Step Three and the test against the five structural causes

	Step 1: EU DRCF	Step 2: EU DEA	Step 3: Treaty reform
Geopolitical capture	No	**Yes**	**Yes**
Accountability deficit	Partially	Largely	**Yes**
Governance fragmentation	Partially	Largely	**Yes**
Resource gaps	Partially	Largely	**Yes**
National interests	No	**Yes**	**Yes**

Figure 10 of the Strategy Note: Could a sequenced reform overcome the root causes? Coordination alone leaves capture and national interests untouched.

Step Three (2030+): Treaty-level reform

MECHANISM

Treaty revision with an explicit legal basis for independent enforcement agencies, direct powers and clear accountability to the European Parliament.

VISION

Four pillars across the Digital Single Market: DEA (AI, data, platforms) · strengthened ENISA · reformed BEREC · an independent EU competition authority.

THRESHOLD

Unanimity and 27 ratifications. Draghi, Letta and von der Leyen have all called for treaty change. The Short Selling / AMLA line of case law is an enabler.

SEQUENCE

Steps One and Two are not interim measures: they are the political and institutional preparation for Step Three, and the proof that it is needed.

Source: Zenner & Koomen (2026), Figures 10 and 12.

Four takeaways, incl. one for rightholders

1. **Structural, not accidental:** The GPAI enforcement gap has the same five causes as the rest of the digital rulebook, in one of the few areas where Brussels enforces directly.

2. **Half a toolbox:** Fifteen months after the enforcement duties applied: first information requests on training summaries, no fining procedure, only one unit, nobody checking crawlers or copyright policies.

3. **Sequence beats a leap:** EU DRCF in 2027, DEA in the 2028–2034 MFF, a coherent and strong treaty basis added later.

4. **The law already asks the question:** Art. 112 (2028, 2031). The MFF answers it in 2027. The proposal must be on the table before the new EU budget is.

For rightholders

- Insist on enforcing what exists: Art. 53(1)(c)–(d) apply since Aug 2025. Ask what the copyright information requests produced.
- Ask for an EU-level complaint route: Art. 89(2) serves downstream providers only.
- Push for one EU standard and registry for machine-readable reservations (EUIPO); the AG's three conditions only bite if someone checks them.
- Back independent capacity: a DEA domain auditing training data and crawlers is the enforcement the Code cannot deliver.

Full paper, figures and sources:



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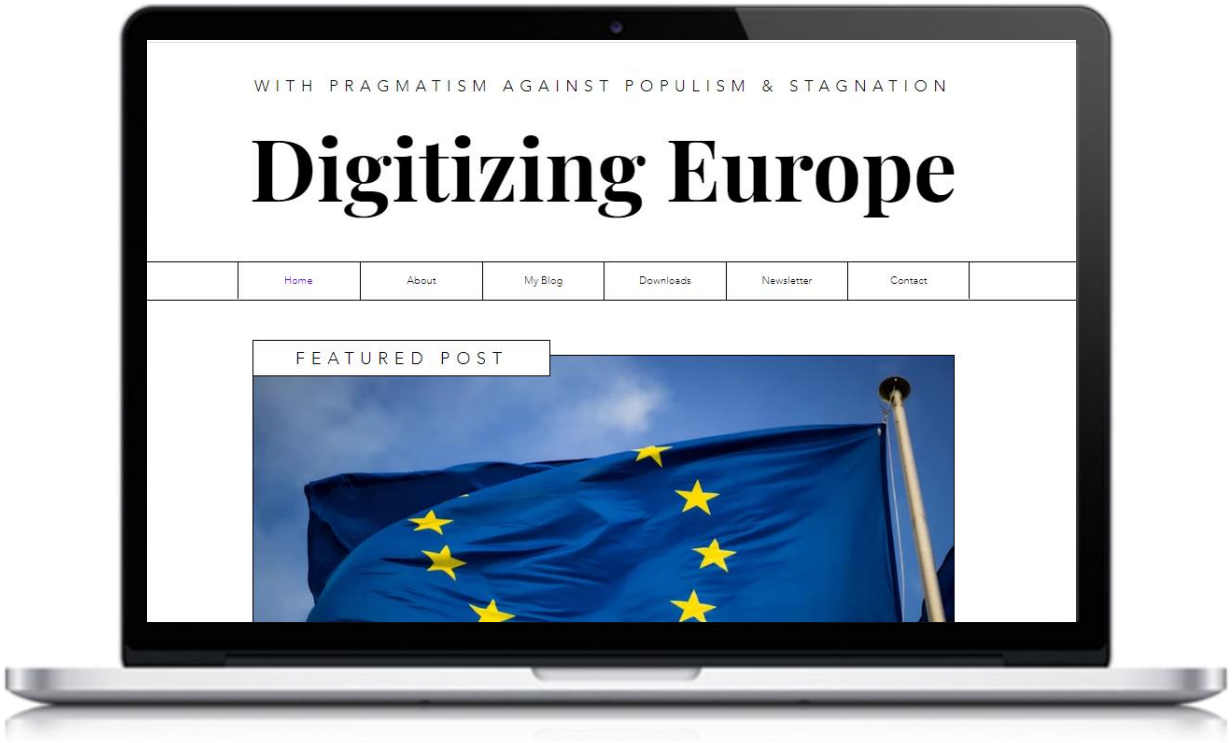
Let's keep in touch!



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