



Call for Evidence on the Digital Fitness Check ***Response from VIDEO GAMES EUROPE***

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Executive Summary

Video Games Europe would like to make following recommendations in the context of the Digital Fitness Check:

- The Digital Fitness Check should assess the full compliance burden on digital businesses, including from the EU consumer law acquis, the AI Act, and more.
- The Digital Fitness Check should also include the foreseeable impact of new legislation planned under this mandate in all relevant areas.
- Consistency between existing laws should be closely assessed.
- A greater focus on establishing a strong evidence base for all regulatory restrictions is needed.
- National regulators should have statutory duties to consult and to cooperate.

1. Video Games Europe welcomes the opportunity to respond to the Call for Evidence on the Digital Fitness Check. Our sector is an international business, and almost all video game companies offer their services globally. Video games companies, therefore, heavily depend on a legal framework that provides uniform rules across the EU and allows them to innovate and create value across the European Single Market.

2. Regulatory clarity, predictability and proportionality are not only essential for compliance, but they are also key enablers of innovation and growth for businesses. The video games industry relies inherently on advances in technology, high-performing and content-neutral internet connectivity and an effective copyright and IP regime that allows creativity and investment in new works to be sustained over the longer term.

3. The digital rulebook under review should not be limited to the body of EU legislation “*with a significant digital angle and its implementation*”, as indicated in the call for evidence document. The analysis should include all relevant legislative and non-legislative rules that affect the development and provision of digital products and services. The consumer protection acquis, for instance, heavily interacts with rules and regulations that impose obligations regarding contract law, platform liability and intermediary services. **In order to fully understand the cumulative impact of compliance burdens, the full body of EU law should be taken into account.** The regulatory burden on companies innovating digital products and services in Europe must be measured by the sum of legislative acts that apply to them *de facto*, irrespective of if they have them term ‘digital’ in their title or not.

4. The Digital Fitness Check should also consider new regulations that are expected to be proposed or adopted in the course of this mandate. These will further add to the broad set of recently adopted regulations and directives that have transformed the legal landscape. The impacts of intended new legislation on the competitiveness of businesses, in particular SMEs, start-ups and small mid-caps should be carefully assessed, in order to prevent that they create further regulatory complexity, inconsistencies and overlaps, thereby jeopardising the legal clarity that companies need to innovate and thrive in Europe.

5. Video Games Europe fully supports the Commission's ambitious simplification agenda as outlined in its communication "A Simpler and Faster Europe". We welcome this change in regulatory culture that aims to establish a fairer business environment and recognises the need to overcome national fragmentation, e.g., through harmonised and proportionate EU legislation where necessary. We would like European policy makers to consider the following recommendations as part of this new regulatory culture.

Regulatory consistency should be a guiding principle for all EU interventions.

6. Legislative and non-legislative activities within the Commission are governed by a set of common "Better Regulation" principles. New initiatives, impact assessments, consultations and evaluations must be coherent across different policy domains while instruments must be coherent within policy areas. They must be prepared collectively by all relevant services in the framework of interservice groups. Coherence checks should entail a requirement to consider appropriate regulatory consistency between all EU instruments. Information requirements for digital (distance and off-premise) contracts, for instance, are subject to rules from the Consumer Rights Directive (Art. 6), eCommerce Directive (Art. 10), Services Directive (Art. 22) and the Unfair Commercial Practices Directive (Art. 7). Commission services should be explicitly required to identify overlaps within the full body of EU law, assess inconsistencies and streamline legal definitions across the various policy domains.

7. One of the recent difficulties regarding consistency concerns the AI Act. While one of the stated goals of the AI Act is to promote the use of AI in the EU, we have noted that certain provisions, such as Article 50, could effectively hinder the use of AI in creative and cultural industries such as our own. We reiterate our sector's commitment to safe and responsible use of AI, but we also welcome consistency and proportionality in how legislation such as the AI Act is applied.

8. Regulatory inconsistency can also be found in the Data Act, which explicitly allows in Article 19 the disclosure of trade secrets or alleged trade secrets to a public sector body having received data pursuant to a request to make data available based on exceptional need. The requirement to disclose trade secrets is in clear contrast with the GDPR, which recognises the right to maintain the confidentiality of trade secrets. Specifically, Recital 63 GDPR clearly states the right of access to an individual's personal data "*should not adversely affect the rights and freedoms of others, including trade secrets...*" (See also Art. 15.4 GDPR). Similarly, a data holder under the Data Act can also be a data controller under the GDPR whereby

corresponding obligations, such as data minimisation, purpose limitation, and privacy by design, may be conflicting as the data holder may need to provide much larger datasets.

9. Another example of regulatory inconsistency is the situation regarding the Cyber Resilience Act: contrary to the objective of simplification of this Commission's mandate, recent statements from the Commission seemed to indicate (based on a wide interpretation of Recital 9), that every single standalone software sold on their own are to be within scope of the CRA, potentially also including in-game items and additional downloadable content that are placed on the market separately. This is impractical, especially for 'low risk software', whose sole purpose is to be run locally on the device in which it is installed (e.g. pure offline games). Such a game presents very few cybersecurity risks and, if any, most if not all associated risks would be mitigated by the console/PC platform/mobile OS system itself. This interpretation is also rather impractical for a game's downloadable content that is simply unusable without the base game in which it is embedded, and for which cybersecurity risks would necessarily be covered and addressed via an update to the base game itself. Moreover, we believe that the short timespan between the publication of harmonised standards for essential requirements for 'default' products with digital elements (expected in October 2027), and the application of the CRA's rules (December 2027), will create significant adaptation issues, not only for our industry, but for most sectors relying on software development. We believe that a delay in application of the rules is warranted, unless the publication of the harmonised standards is expedited.

Regulatory interventions should always be grounded on an evidence base.

10. Legislation should always be grounded on available evidence including scientific research, or a transparent explanation of why some evidence is not available and why it is still considered appropriate to act. The role of the Regulatory Scrutiny Board is key as it needs to provide quality assurance of the evidence underpinning the Commission's impact assessments and fitness checks. Where such evidence is lacking, or the legal assessment is clearly erroneous, the Commission services should ask the Board to re-assess and make changes as needed. We call on the Commission to take such an informed approach to heart, even where regulatory intervention is non-legislative, for instance in the format of Guidelines. Such an informed approach, based on evidence and the rule of law, has the potential to increase Europe's attractiveness as a business location, if taken seriously. If not, growing legal uncertainty will become an increasing hurdle for companies aiming to innovate in Europe.

11. The DSA Article 28 Guidelines, for instance, adopted wording in support of a potential legal misrepresentation that in-game currencies (tokens or coins) can be classified as "virtual currencies" rather than as digital content, which is contradicted by Dutch and German national court decisions. The Commission should ensure that such concerns are always swiftly addressed and that retention of a certain approach is properly explained and justified.

12. An example of enforcement of EU law without underpinning evidence, leading to a high degree of legal uncertainty, are the CPC Network's "Key Principles on Virtual In-game

Currencies". These Principles, if implemented rigorously, would require a complete rethinking and redesign of many games available in Europe (especially free-to-play games), leading to the closure of studios that cannot afford to do that. Yet, the CPC Network was unable to point to empirical evidence for the alleged concerns addressed by these Principles, e.g., any reports on consumer complaints. In addition, the Principles advance a novel legal theory, i.e., a legal re-classification of in-game currencies, which is legally flawed and in contrast to existing case law. In sum, this leads to a high degree of legal uncertainty, threatening an important business model for an innovative sector that is investing in Europe.

National regulators should have statutory duties to consult and cooperate.

13. Video Games Europe welcomes the Commission's plans to work more closely with Member States in implementing EU law. Overlaps between European rules and national legislation are numerous. We agree that the work to streamline and simplify EU, national and regional rules and to implement policies more effectively is a concerted one that includes Member State authorities. Consistency and coherence should also be applied by national authorities when they enforce the rules. Improved coordination among regulators across regulatory domains will help avoid conflicting interpretations and ensure consistent guidance. Competent authorities for EU digital laws should have a statutory duty to consult and cooperate with other authorities, whenever such authority exercises its powers in a subject matter that is also covered by another digital law, with the aim of avoiding conflicts of law and while having due regard to the powers of other authorities.

About Video Games Europe

Since 1998, Video Games Europe has ensured that the voice of a responsible games ecosystem is heard and understood. Its mission is to support and celebrate the sector's creative and economic potential and to ensure that players around the world enjoy the benefits of great video game playing experiences. Video Games Europe represents European and international video game companies and national trade associations across the continent. Europe's video games sector is worth €24.5bn, and 53% of Europeans are video game players. We publish a yearly [Key Facts report](#) with the latest data on Europe's video games sector.

Video Games Europe Secretariat, March 2026