# *Technical Challenges of EU's Digital Sovereignty Aspirations*

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# "Digital" Jurisprudence (selected regulations)

| Law | Enforcement | Area | Rights & Freedoms |
|---|---|---|---|
| GDPR | MAY-2018 | personal data | transparency, autonomy, fiduciary |
| DSA | NOV-2022 | service | transparency, autonomy, fiduciary |
| DMA | MAY-2023 | market | autonomy |
| DGA | SEP-2023 | market | fiduciary |
| AI Act | voting | technology | fiduciary |
| ePrivacy Reg | draft | communication | transparency, autonomy, fiduciary |
| Data Act | proposed | data | autonomy |
| Health Data Space | proposed | health data | autonomy, fiduciary |
| Interoperability Act | proposed | data | autonomy |

# EU is building a *repertoire* of 'Data' Laws

Current: GDPR, DSA, DMA, DGA

Proposed: AI Act, ePrivacy, Data Act, (Health) Data Space, Interoperability Act



**vs**



**"Jigsaw" Laws**
one (correct) solution where everything fits, discovered progressively

**"Lego" Laws**
Many (correct) solutions can work, needs agreement on which one to choose
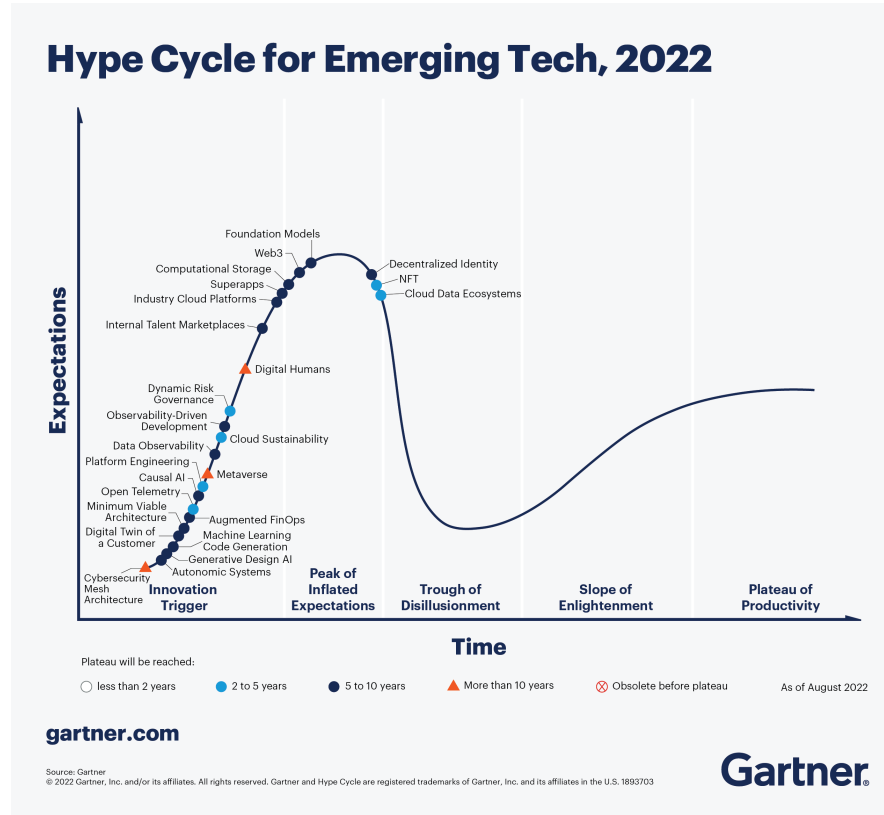
# Known Challenges for GDPR Enforcement[1]

[1] Four Years under the EU GDPR: How to fix its Enforcement https://www.accessnow.org/cms/assets/uploads/2022/07/GDPR-4-year-report-2022.pdf

| | |
|---|---|
| **Time**<br>investigations, decisions, appeals, final decisions | **Gaps**<br>new technologies, loopholes, interpretations |
| **Space**<br>jurisdiction, establishment, transfers, adequacy | **Consistency**<br>need for EDPB, under-investigated areas |
| **Money**<br>under-funded authorities, effective fines | **Scope**<br>web-scale enforcement, pan-EU actions |
| **Knowledge**<br>new technologies, new use-cases | **(Side-)Effects**<br>malicious compliance: e.g. pesky dialogues |

# *Foreseeing* Legal Enforcement Challenges

| | |
|---|---|
| **Time**<br>**technology change ~5 years, case law ~5 years** | Gaps<br>new technologies, loopholes, interpretations |
| **Space**<br>**global internet + multi-nationals = chaotic rules** | Consistency<br>need for EDPB, under-investigated areas |
| Money<br>under-funded authorities, effective fines | Scope<br>web-scale enforcement, pan-EU actions |
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# Laws planned vs Technological Advances

# Foreseeing _Legal_ Enforcement Challenges

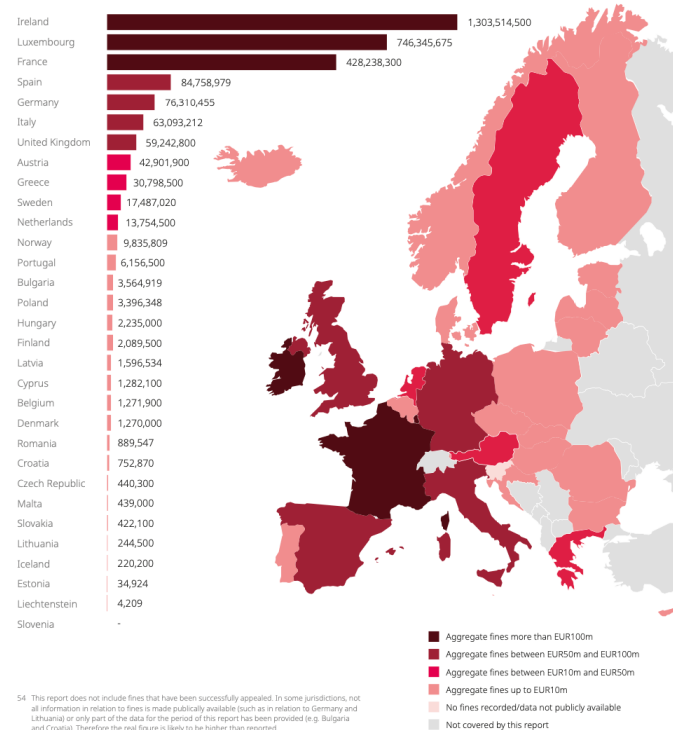| | |
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| **Space**<br>global internet + multi-nationals = chaotic rules | **Consistency**<br>need for EDPB, under-investigated areas |
| **Money**<br>**MORE under-funded authorities + SLOW fines** | **Scope**<br>web-scale enforcement, pan-EU actions |
| **Knowledge**<br>**disconnected laws and reactive interpretation** | **(Side-)Effects**<br>malicious compliance: e.g. pesky dialogues |

# Unknown impact of fines

Extent of fines being a "deterrence" to avoid bad practices?

Extent of fines being a "motivator" to improve and innovate?

## Report

Total value of GDPR fines imposed from 25 May 2018 to date (in euros)[54]

| Country | Value |
| --- | --- |
| Ireland | 1,303,514,500 |
| Luxembourg | 746,345,675 |
| France | 428,238,300 |
| Spain | 84,758,979 |
| Germany | 76,310,455 |
| Italy | 63,093,212 |
| United Kingdom | 59,242,800 |
| Austria | 42,901,900 |
| Greece | 30,798,500 |
| Sweden | 17,487,020 |
| Netherlands | 13,754,500 |
| Norway | 9,835,809 |
| Portugal | 6,156,500 |
| Bulgaria | 3,564,919 |
| Poland | 3,396,348 |
| Hungary | 2,235,000 |
| Finland | 2,089,500 |
| Latvia | 1,596,534 |
| Cyprus | 1,282,100 |
| Belgium | 1,271,900 |
| Denmark | 1,270,000 |
| Romania | 889,547 |
| Croatia | 752,870 |
| Czech Republic | 440,300 |
| Malta | 439,000 |
| Slovakia | 422,100 |
| Lithuania | 244,500 |
| Iceland | 220,200 |
| Estonia | 34,924 |
| Liechtenstein | 4,209 |
| Slovenia | - |

Aggregate fines more than EUR100m
Aggregate fines between EUR50m and EUR100m
Aggregate fines between EUR10m and EUR50m
Aggregate fines up to EUR10m
No fines recorded/data not publicly available
Not covered by this report

54  This report does not include fines that have been successfully appealed. In some jurisdictions, not all information in relation to fines is made publically available (such as in relation to Germany and Lithuania) or only part of the data for the period of this report has been provided (e.g. Bulgaria and Croatia). Therefore the real figure is likely to be higher than reported.

# Foreseeing Legal _Enforcement_ Challenges

| | |
|---|---|
| **Time**<br>technology change ~5 years, case law ~5 years | **Gaps**<br>exploit as 'market', force to fit into 'regulation' |
| **Space**<br>global internet + multi-nationals = chaotic rules | **Consistency**<br>regions, technologies, interpretations |
| **Money**<br>MORE under-funded authorities + SLOW fines | **Scope**<br>web-scale enforcement, pan-EU actions |
| **Knowledge**<br>disconnected laws and reactive interpretation | **(Side-)Effects**<br>malicious compliance: e.g. pesky dialogues |

# Foreseeing Legal Enforcement *Challenges*

| Time | Gaps |
|---|---|
| technology change ~5 years, case law ~5 years | exploit as 'market', force to fit into 'regulation' |
| **Space** | **Consistency** |
| global internet + multi-nationals = chaotic rules | regions, technologies, interpretations |
| **Money** | **Scope** |
| MORE under-funded authorities + SLOW fines | **pervasive & ubiquitous 'digital' presence?** |
| **Knowledge** | **(Side-)Effects** |
| disconnected laws and reactive interpretation | **compliance is an illusion and creates barriers** |

# In Conclusion ...

- EU has planned an extremely ambitious legal regime to achieve its vision of 'Data' markets that aligns with fundamental principles

- Specific laws are planned to address '*Technological Sectors*'

- But **not enough** is being planned or discussed about how we there will be effective application and enforcement

- "*Digital Jurisprudence*" needs new mechanisms that are based on the *virtuality* and *momentum* that arises because of data + technology

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*Technical Challenges*
*of EU's Digital*
*Sovereignty Aspirations*

# *Thank you!*
# *Commencing Discussions…*

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