



# The Illusion of Choice: EU Data Protection and Competition Law in Light of Meta's AI Training Practices

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Working Paper

Understanding and addressing digital inequalities  
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# Overview



Introduction



Conceptual note



Meta's AI training practices in context



The GDPR Framework: Legitimate interest



The DMA: Gatekeeper obligations under EU law



Key takeaways & further developments

# Introduction

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**RQ: «Do the GDPR and the DMA address information and digital inequalities in the EU legal framework?»**

Main reasons for case selection (Meta AI Training):

- Meta is both a GDPR data controller and a DMA gatekeeper
- It exposes the structural tension between individual rights and market power
- One of the first major test cases in which AI training by a dominant platform directly confronts both the GDPR and the DMA



# Conceptual note

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## Dimension

## Definition

Information  
Asymmetries

Structural imbalances in the distribution and control of information; dominant actors accumulate disproportionate knowledge and unilateral decision-making power

Digital  
Inequalities

Disparities in individuals' actual capacity to exercise digital rights and participate meaningfully in the data economy, reflecting differences in literacy, resources, and procedural accessibility.

# Meta's AI practices in context & Regulatory responses

## June 2024

Meta pauses its EU AI-training rollout after GDPR concerns raised by the Irish DPC

## April 2025

Meta relaunches AI training using public content from adult users + opt out option

## May 2025

Cologne Court Decision, Meta AI training is compliant with the GDPR and the DMA

## December 2024

Opinion 28/2024

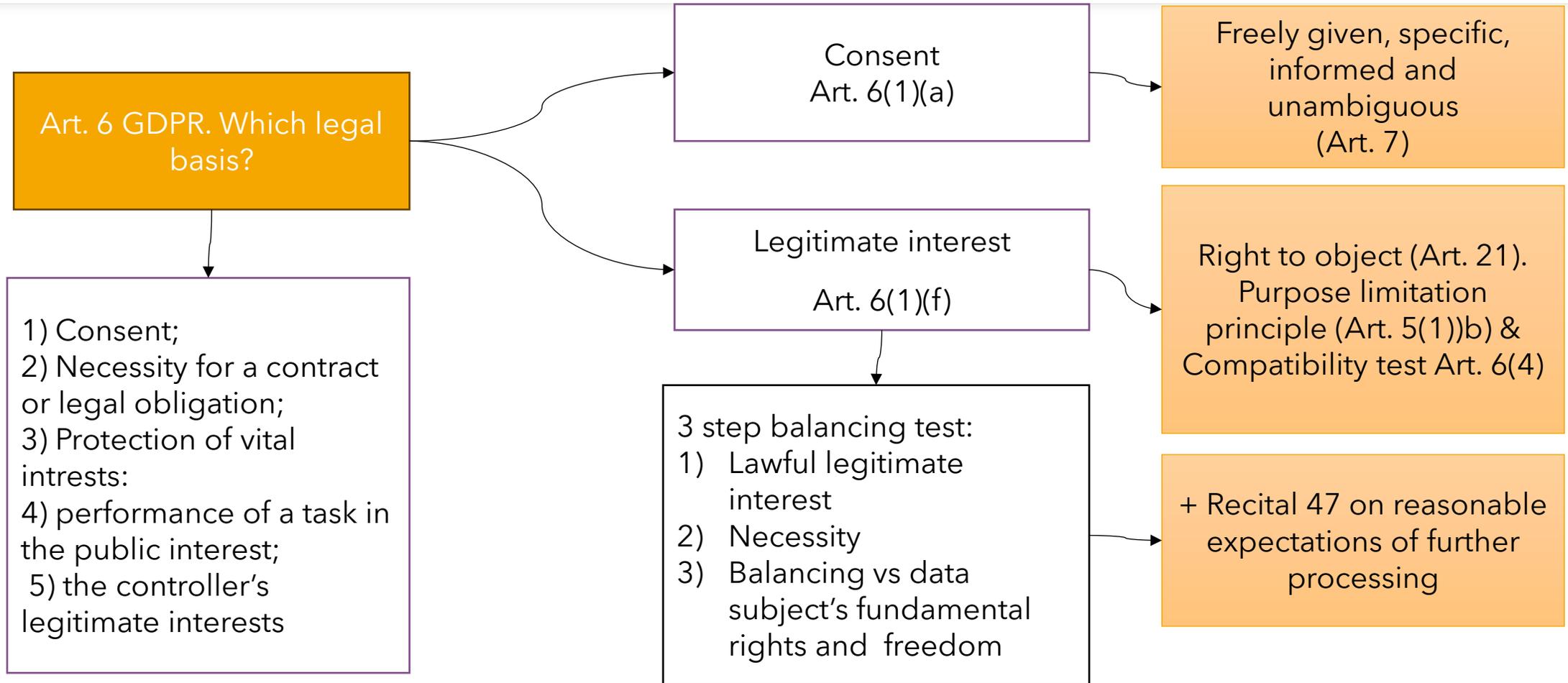
## April-May 2025

Consumer associations express concerns on compliance with the GDPR and the DMA

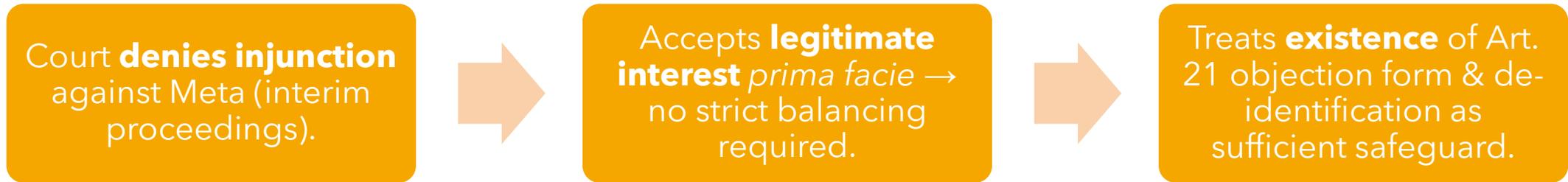
## Today

Further case law (e.g. Amsterdam Court)

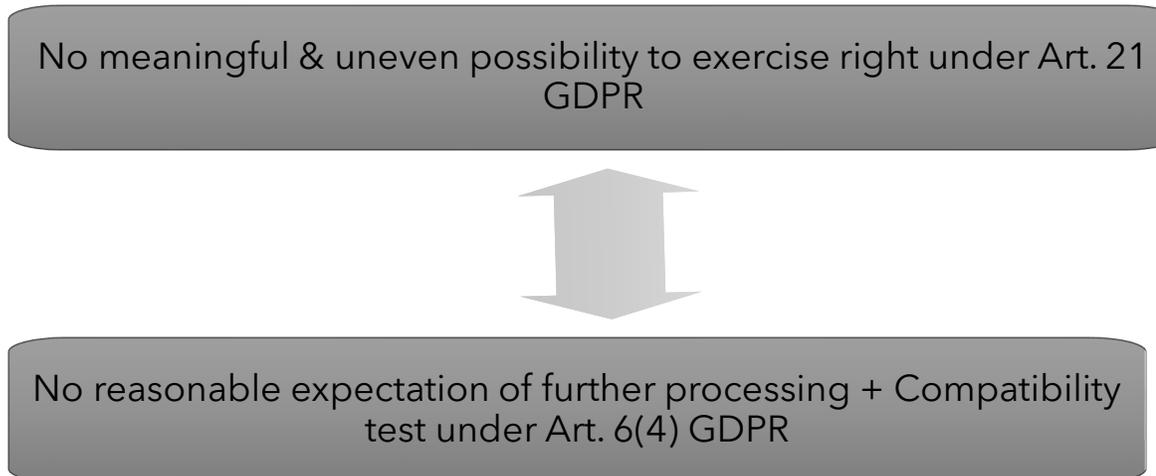
# The GDPR Framework: Legitimate interest



# The Cologne Lens: When Safeguards Become Formalities



## In practice:



# The DMA: Gatekeeper obligations under EU law

## OVERALL LOGIC OF DMA: DIGITAL DOMINANCE IS SUBSTANTIATED BY INFORMATIONAL CAPITAL

Ensure contestable and fair digital markets. In particular:

- Overcome structural market failures
- Address unfair practices by gatekeepers
- Complement—but not replace—traditional competition law
- Prevent data-driven entrenchment

## Art. 3 DMA (Gatekeepers).

Meta clearly qualifies as a gatekeeper because it:

- has significant impact on the internal market,
- controls multiple core platform services
- holds an entrenched and durable market position.

Art. 5(2)(b) DMA  
(Ratio clarified by  
Recital 36)

# Why a narrow approach like the one of the Court of Cologne is problematic



The Court of Cologne held that the use of partially de-identified and disaggregated data from Facebook and Instagram did not constitute a “combination” of personal data under Art. 5(2)(b) [only targeted, user-specific cross-platform profiling is prohibited]



This interpretation undermines the purpose of the DMA, which is to prevent cross-service informational advantages and is not consistent with Recital 36 DMA «The processing ... gives gatekeepers potential advantages in terms of **accumulation of data**, thereby raising barriers to entry».



Also, according to the Commission pay-or-consent decision, Art. 5(2)(b) DMA applies regardless of the purpose of the processing

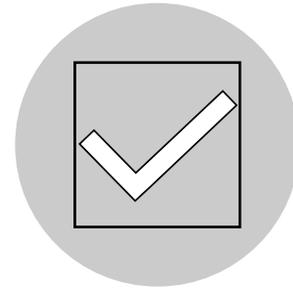


allows gatekeepers to bypass the DMA simply by labelling data as “de-identified”.

# Key takeaways & recent developments



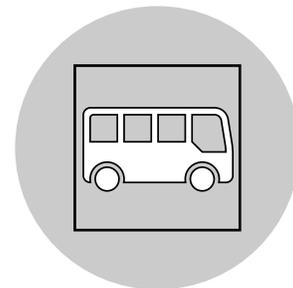
Stricter application of the legitimate interest basis (consistently with opinion 28/2024 EDPB)



Effective opt out mechanisms



Art. 5(2)(b) DMA must be interpreted coherently with his purpose



Omnibus package & Amsterdam Court

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# Discussion and Q&A

