Call for Input Response

April 2024

DRCF

Digital Regulation Cooperation Forum

CMA — Competition & Markets Authority   Ofcom   ico.   FCA — Financial Conduct Authority

Contents

Summary

The Digital Regulation Cooperation Forum (DRCF) received 26 responses to its November 2023 Call for Input (CfI) to inform its Workplan 2024/25. The CfI responses supplemented extensive internal consultations, including with the boards of the four member regulators.

The CfI revealed that stakeholders observe intersections between the responsibilities of DRCF member regulators in a high number of areas of digital regulation, with common themes being artificial intelligence (AI), Smart Data and data portability, digital identity (digital ID), online safety and data protection, data sharing to prevent scams and fraud, critical third parties and regulation and enforcement. CfI respondents would like DRCF member regulators to collaborate in developing supervisory technologies, to pursue partnerships with other regulators domestically and engage with regulators overseas.

In some areas, the DRCF is taking forward relevant work, or will do so in the coming year. This document identifies those areas and explains why others are not being pursued at this time.

Many of our projects currently involve engaging with industry, consumers and wider stakeholders. As digital regulation evolves, we are keen to continue to listen to views from all sectors, and to keep stakeholders informed of our ongoing work.

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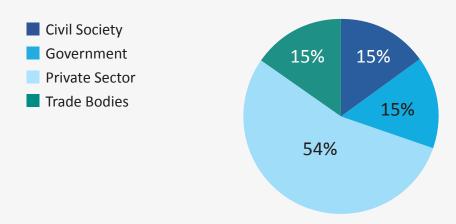
Introduction

In November 2023, the DRCF published a CfI seeking views on where intersections in digital regulation are being perceived and what action DRCF member regulators could take in light of these. The CfI responses supplemented extensive internal consultations on future DRCF activities, including discussions with the boards of the four member regulators.

 We asked stakeholders the following questions:

1. What are the most important areas of technology or digital regulation where you are observing intersections between the responsibilities and work of the DRCF regulators?

2. What specific joint action by DRCF member regulators would you like to see? What shared processes, guidance or other outputs would you find useful?

We received input from 26 organisations, both in written form and through direct stakeholder engagement. We received contributions from private sector (14 responses), government (4 responses), civil society (4 responses) and trade bodies (4 responses).

Breakdown of CfI respondents

- Civil Society
- Government
- Private Sector
- Trade Bodies

15% 15% 15% 54%

Note: The above percentages do not total to 100% due to rounding.

There were common themes identified across responses. The 'word cloud' below illustrates some of them.

Note: The size of the word in the visual correlates with how frequently it was mentioned in the responses we received.

Artificial Intelligence

AI governance was the issue most raised by respondents. It was suggested that we could coordinate the implementation of the Department for Science, Innovation and Technology's (DSIT) AI principles set out in its "A Pro-Innovation Approach to AI Regulation" White Paper,[1] explore the implications of generative AI (Gen AI) and foundation models (FMs) and develop a common approach to algorithmic auditing.

Five respondents encouraged us to play a key role in coordinating member regulators' approaches to the five cross-sectoral AI principles. Respondents asked for greater clarity on how the AI principles are being interpreted and implemented by regulators. They referenced the principles of fairness and appropriate transparency and explainability as priority focus areas.

Three respondents raised Gen AI and FMs as areas which would benefit from further exploration. Respondents said that little was known about these technologies, with one noting the risk of a highly concentrated market. Another respondent highlighted that there was a potential for AI to create false information that is more difficult to detect, noting that this could lead to a loss of trust in markets.

Two respondents said that consumer-specific research into the use of Gen AI and FM applications is currently lacking, with one respondent expressing concern about consumers' use of such applications in receiving financial advice.

One respondent suggested that the DRCF could develop a cross-sectoral common approach to algorithmic auditing. They noted that any use of the third-party auditing market by regulators should be carefully considered, welcoming further research into this area.

DRCF response

We recognise the importance of cross-sectoral coordination in AI regulation. It will remain a key area of focus in our 2024/25 Workplan and in the longer term. We will continue to promote responsible AI including identifying the potential implications of Gen AI, enhancing our (and regulated firms') understanding of the third-party algorithmic assurance market and collaborating on the implementation of the Government's AI framework. We will also be providing informal advice as part of the DRCF AI and Digital Hub pilot service, which will aid us in our understanding of cross-regulatory implications of AI. This will guide our wider AI-related work. See pages 9-10 of the Workplan for further details.

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1   A pro-innovation approach to AI regulation,
     https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper

Smart Data and Data Portability

Some respondents proposed that the DRCF could play a role in harmonising potential future Smart Data schemes and more generally encouraging data portability between sectors.

Respondents also suggested that the DRCF could coordinate a joint statement between the ICO and CMA to set out views on data portability in the UK.

DRCF response

We recognise the potential for regulators to play a role in helping coordinate future Smart Data provisions, should the Government implement schemes under new powers proposed in the Data Protection and Digital Information (DPDI) Bill.

One of the aims of the Smart Data Council, established by the Department for Business and Trade in April 2023, is to drive collaboration and knowledge-sharing.[2] While the DPDI Bill is before Parliament, and as all DRCF member regulators are members of the Smart Data Council, we do not see value in the DRCF conducting work in parallel to the Smart Data Council this year, given risks of prematurity and duplication. We will keep abreast of developments and revisit this topic as part of our future work planning.

In the meantime, the CMA and ICO will publish a statement on their approach to data sharing and interoperability as part of the Data Protection and Competition project described on page 12 of the Workplan.

Digital Identity

Six respondents raised digital ID as a key area of regulatory intersection. Multiple respondents asked how Ofcom's Online Safety Act (OSA) will interact with other pieces of legislation involving digital ID or age verification frameworks such as the DPDI Bill, the EU's Audio-Visual Media Services Directive (AVMSD) and DSIT's Digital Identity Trust and Attributes Framework. Respondents proposed that the DRCF streamline the roll out of digital ID frameworks in different sectors, to contribute to greater regulatory certainty and reduce the risk of duplication. Respondents advised the DRCF to engage with outside organisations who have experience with digital ID.

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2   New Smart Data Council to drive forward savings for household bills,
     https://www.gov.uk/government/news/new-smart-data-council-to-drive-forward-savings-for-household-bills

DRCF response

The DRCF's Horizon Scanning Project is currently conducting research into the future landscape of digital ID which will continue into the 2024/25 year. This work includes considering developments such as decentralised digital ID, identity within open data frameworks, and international examples of digital ID deployments. When that project concludes, the DRCF will consider the prospects for future work together on digital ID.

In parallel, under the OSA, Ofcom has a duty to recommend the use of 'highly-effective age assurance' by specific online services to prevent children from encountering certain types of content, and to provide guidance to services on user identity verification. Ofcom is engaging with stakeholders and relevant regulators, including the ICO, as it develops its draft codes of practice and guidance.[3]

Online Safety and Data Protection

Many respondents highlighted a perceived tension between online safety and data protection, particularly around perceived challenges of implementing the OSA without infringing data protection law. One respondent suggested that the DRCF could provide guidance on how the OSA can be successfully implemented while accounting for other regulatory frameworks.

Other aspects of online safety included a proposal to expand the ICO and CMA statement on online choice architecture[4] by adding perspectives from all four member regulators.

Multiple respondents called on the DRCF to streamline regulatory approaches to end-to-end encryption, highlighting the interplay between privacy and online safety. Three respondents requested that we collaborate in considering the implications of privacy enhancing technologies (PETs), recognising the potential for the technology to provide solutions for the tensions between privacy and encryption.

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3   Ofcom's consultation on the Guidance on age assurance and other Part 5 duties for service providers publishing pornographic content on online services closed on 5 March. In Spring, Ofcom will begin consulting on the draft codes and of practice and guidance relating to protection of children. In early 2025, Ofcom will consult on the duties for categorised services, including the Part 4 duties for Category 1 services to offer all adult users of a service the option to verify their identity.

4   Harmful design in digital markets, https://www.drcf.org.uk/__data/assets/pdf_file/0024/266226/Harmful-Design-in-Digital-Markets-ICO-CMA-joint-position-paper.pdf

DRCF response

The DRCF Ofcom and ICO project on online safety and data protection will continue in 2024/25. See page 10 of the Workplan for details. In 2022/23, Ofcom and the ICO convened a dedicated workstream on end-to-end encryption as part of the broader DRCF online safety and data protection project. At present, Ofcom and the ICO continue to collaborate on specific regulatory outputs relating to end-to-end encryption and maintain an established knowledge sharing network committed to discussing cross-sector issues related to PETs. See page 12 of the Workplan.

Data Sharing to Prevent Scams and Fraud

Four respondents requested guidance and knowledge sharing between regulators on data sharing for the prevention of scams and fraud, particularly to provide clarity to industry on the legality of sharing data for this purpose.

DRCF response

We understand the importance of regulatory clarity regarding sharing data for the prevention of scams and fraud. The ICO will explore potential advice on how data protection law can support data sharing for scams and fraud prevention across digital sectors (e.g. finance, social media, telecommunications), collaborating with other DRCF member regulators as well as wider regulator and industry stakeholders during its development.

Critical Third Parties

Two respondents suggested that the DRCF should harmonise member regulators' approaches to identify and manage the potential risks that may arise with failure in, or disruption to, Critical Third Parties. It was noted that the FCA could share lessons learned in this area to be applied across sectors.

DRCF response

The DRCF members have previously shared knowledge on their regulatory functions relevant to cyber security and resilience, including Critical Third-Party risks. Following the outcome of the CMA's Cloud Services Market Investigation,[5] this topic will again be considered as part of long-term DRCF work planning. In the meantime, the FCA will continue to consult with DRCF member regulators on relevant designations of Critical Third Parties as they occur.

Regulation and Enforcement

One respondent highlighted the importance of jointly developing Machine Readable Regulation (MRR) for use in enforcement work and ensuring our member regulators have appropriate expertise to navigate the changing digital regulatory landscape. Another called for joint data requests to ease the regulatory burden on firms.

DRCF response

We have a project dedicated to supervisory technologies, and another dedicated to ensuring DRCF member regulators have the appropriate skills and capabilities to regulate the digital sector effectively. These projects are ongoing, with an initial focus on where DRCF member regulators can utilise technology in the exercise of their functions. More detail is set out on page 13 and 14 of the Workplan. The DRCF may also coordinate in relation to information requests if possible and practicable within the relevant legal frameworks.

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5   Cloud services market investigation,
     https://www.gov.uk/cma-cases/cloud-services-market-investigation

Potential Partnerships and Engagement

Some respondents suggested that DRCF member regulators should take a joined-up approach to engaging with key firms in digital markets: for example, the CMA and FCA could collaborate on the competition impacts of Big Tech's expansion into financial markets.

Respondents encouraged cooperation or partnership with various non-DRCF regulators and organisations. Two respondents suggested we work with the Payment Systems Regulator (PSR) on projects related to tackling digital fraud. Another respondent suggested that we should partner with the Equality and Human Rights Commission (EHRC), due to their legal expertise on the issue of algorithmic fairness. Respondents also supported ongoing engagement between DRCF members and DSIT on AI incident reporting, approaches to digital ID and more broadly to help support the implementation of the UK AI regulatory framework.

Four respondents supported DRCF engagement with international regulators, all of whom expressed concern about the difficulties UK businesses face in navigating multiple AI regulatory regimes overseas. One respondent suggested that we could identify and coordinate with similar regulatory coordination bodies internationally.

DRCF response

We value engagement and input from external parties, both domestically and internationally. We are committed to collaboration as regards large companies that play a key role in digital markets. Last year, we engaged with external partners on AI project work, and will continue to seek opportunities to partner with non-member regulators to identify joint work that will have a positive impact on the participants' collective regulatory objectives. We have established the International Network on Digital Regulatory Cooperation and will continue to engage with international counterparts in the coming year: see page 15 of the Workplan for further details.

Feedback on previous DRCF outputs

We welcomed feedback from the CfI on DRCF outputs to date, as well as areas for development going forward. Respondents highlighted the value of individual DRCF pieces of work. For example, the ICO and CMA joint position paper on online choice architecture was highlighted as providing significant value through both its content and the style of publication. Three respondents requested clearer and more succinct information about DRCF in-year activities.

Respondents highlighted the work of individual member regulators, highlighting pieces of work that were notable successes and could help inform the future work of the DRCF. The work of the FCA and Prudential Regulatory Authority in identifying and communicating the risk of Critical Third Parties was one notable mention. The ICO Small Business Hub was also named as an example of best practice to inform DRCF's launch of the AI and Digital Hub.

We have taken this feedback into consideration within the Workplan by providing greater clarity on the purpose and activities for each of our projects. We will continue to provide updates on our work throughout the year, through our website and social media presence.

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Next steps

The responses to the CfI, summarised in this document, have informed the DRCF 2024/25 DRCF Workplan.

Throughout the year and in line with the DRCF's three-year vision, we will continue to gather ideas for the future focus of our work through our domestic and international engagement and more specifically through the queries we receive through the AI and Digital Hub pilot. More detail on page 15 of the Workplan.

We welcome further engagement with respondents and any other stakeholders interested in our work. For engagement requests please email **drcf@ofcom.org.uk**.