

Challenges ahead for the DSA: compliance at risk without enhanced cooperation among Digital Services Coordinators.



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General framework of my research:

Institutional design of Member States' authorities competent to enforce EU law.

→ Reasons - implications - solutions.

Presentation:

The DSA enforcement framework cooperation
mechanisms challenges for horizontal
cooperation recommendations and solutions.

DSA enforcement framework

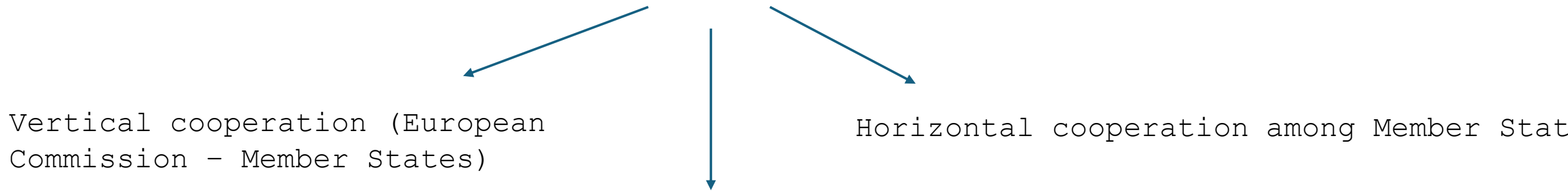


The European Commission is primarily responsible to guarantee that VLOPs and VLOSEs comply with the obligations laid down by the Act.

Each Member State is responsible to supervise and enforce the Act in relation to providers of intermediary services located within its territory.

Cooperation

Alongside the division of work between Member States and the European Commission, compliance with the DSA strongly depends on an effective cooperation among enforcement bodies.



In addition, the DSA establishes the European Board for Digital Services (EBDS).

Possible issues that could challenge the effective functioning
of the DSA enforcement framework among Member States



1. Close parallelism
with the GDPR
cooperation
mechanisms.

2. Member States'
implementation of
institutional
design
obligations.

1. Comparison between the GDPR and DSA enforcement systems.

GDPR	DSA
<p>Article 60 GDPR - 'one-stop-shop' mechanism for cross-border processing of personal data. The supervisory authority of the main establishment acts as lead supervisory authority, whereas other supervisory authorities can be only involved in the case by the lead supervisory authority.</p>	<p>Articles 53 and 58 (1) and (2) DSA - cross-border cooperation among Digital Services Coordinators - when an infringement of a provider of intermediary services established in one Member State causes damages to a recipient located in another Member State, the DSC of destination might request to the DSC of establishment to assess the matter. The DSC of establishment then takes the lead.</p>
<p>Article 61 GDPR on mutual assistance describes how information requests and supervisory measures should be handled by supervisory authorities.</p>	<p>Article 57 DSA - mutual assistance.</p>
<p>Article 62 GDPR - joint operations.</p>	<p>Article 60 DSA - joint investigations - when a provider operates in multiple EU countries and there are concerns that its</p>

What is the problem?

The GDPR system of cross-border cooperation has been criticised because ineffective.

In 2022, the European Data Protection Board (EDPB) issued the Vienna Statement on enforced cooperation identifying a list of procedural aspects that could be further harmonised to ameliorate cooperation in the context of the GDPR.



Consulted by the Commission, the EDPB and European Data Protection Supervisor (EDPS) highlight that additional procedural rules (clarification of the scope, content and modalities of information sharing, and a clear framework for certain procedural steps) harmonising administrative practices, which currently delay or hamper cooperation and make it hard to reach a consensus, are necessary. In addition, it is outlined the necessity to revise procedural deadlines, requirements for admissibility or dismissal of complaints, investigative powers of authorities, and the practical implementation of the cooperation procedure.

On 4 July 2023, the Commission issued a proposal for a Regulation to lay down additional procedural rules relating to the enforcement of the GDPR.



In the context of the DSA, the EU legislator has addressed some of the above issues. For instance, strict deadlines to act have been introduced (Article 58 (5)), and the content of an assessment request of a potential infringement is clarified (Article 58 (3)). In addition, to cope with possible bottlenecks that inaction or disagreements among DSCs might generate, Article 60 DSA entrusts the Commission with the power to assess the matter and eventually recommend alternative measures to the DSC of establishment.

However, certain possible challenges have been not fully addressed or remain to be defined.

Ex: common template or format for individuals' complaints under Article 53 DSA; the creation of an informatic system that might facilitate the circulation and access to such complaints among Member States authorities; clarify the role of the DSC of destination in cases of cross-border cooperation.

2. The paradox of EU institutional design in the context of the DSA.

The DSA largely - although not exclusively - delegates its implementation to national authorities, while leaving a considerable autonomy to the Member States.

EU institutional design obligation	Institutional autonomy
Appoint one Digital Services Coordinator (mandatory) + one or more competent authorities (optional).	There is no preference as regards the type of authority to be appointed as DSC and on the number of other competent authorities. DSC and other competent authorities can be new or already existing authorities.
Oversight and enforcement tasks and powers.	Member States can decide how to divide these tasks among authorities (although the DSC maintain some specific responsibilities). Moreover, they can decide on the rules and procedures for the exercise of these powers.
DSC and other competent authorities should cooperate among each other	Member States are free to provide for cooperation mechanisms and regular exchanges of views and organise internal



The Member States have made different institutional choices, leading to **a lack of consistency**. Ex: The DSA does not provide clear guidance on how this internal coordination should be structured, which can create confusion and hinder effective cooperation. Although there are existing cooperation mechanisms, the ultimate responsibility for creating frameworks for cooperation lies with the Member States themselves. This can lead to fragmented and

Obstacles to cooperation among DSCs are largely linked to reasons of poor EU institutional design.

DSA cooperation framework might be insufficiently implemented or unexecuted.

→ How to cope with this?

1. The European Commission should issue **additional guidelines** referring to procedural aspects of coordination and cooperation among Member States' DSCs and competent authorities. Such guidelines will allow to focus on immediate and concrete enforcement of the Act, avoiding potential lengthy infringement procedures against Member States for non-compliance. As well, they would help immediately shaping *ad hoc* practices - different from those already applied by the authorities appointed as DSCs - to apply in the context of the DSA.

Article 4 (3) TEU - principle of sincere cooperation.

2.

The principle of sincere cooperation is crucial in a multi-level enforcement system.

WHY? the implementation of EU policies, to a large extent, depends on Member States' administrations, exclusively or together with EU institutions. In both circumstances this reliance on national systems and resources presents a potential risk to the EU in terms of achieving its policy objectives. This is because, in practice, Member States might obstruct rather than facilitate policy implementation.

The principle of sincere cooperation intervenes to address possible shortcomings deriving from the poor EU-institutional design of Member States' enforcement bodies.

Recent case law of the Court of Justice has made it clear that sincere cooperation is the basis for a duty for Member States to cooperate not only with EU institutions but also among themselves (Case C-645/19, *Facebook* and Case C-252/21, *Meta Platforms*)



The Court relies on sincere cooperation to address deficiencies in EU institutional guidance. Therefore, in the context of the DSA, this means that national authorities have a duty to cooperate sincerely with the Commission in response to its requests, and national authorities should apply the principle of sincere cooperation in their horizontal relationships with each other.

Thank you for the attention

