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Enforcement of the Digital Services Act in the European Union: Early Lessons and Institutional Roles*

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Abstract

The Digital Services Act (DSA) signifies a paradigm shift in the regulation of online platforms within the European Union. The DSA has been designed to ensure a safer and more transparent digital environment. It introduces binding obligations on very large online platforms (VLOPs) and search engines (VLOSEs), requiring them to assess and mitigate systemic risks. Nevertheless, the efficacy of the DSA is contingent not solely on the robustness of its legal provisions, but also on the coherence and efficiency of the organisational framework entrusted with its implementation and oversight.

This study explores the multi-layered institutional architecture that underpins the DSA and delves into the first stages of DSA enforcement. It specifically discusses the implications of the various proceedings that the European Commission has already initiated against major platforms for alleged non-compliance with DSA requirements.

Furthermore, the analysis examines the necessity for concerted action on the part of public authorities at both the national and European Union levels. It addresses the risk of fragmentation and the requirement for integrated digital governance, which represents a particular capacity of the European Union to preserve the coherence of this co-regulatory model.

Keywords:

Enforcement, digital services, European Commission, digital governance, digital platforms

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I. Introduction

The contemporary digital ecosystem is characterised by the central role played by large platforms in organising social communication, providing access to information, and intermediating goods and services. This has sparked a legal and political debate about establishing a regulatory framework that enables technological innovation and the protection of fundamental rights to coexist. One of the most ambitious regulatory responses to the challenges posed by digital intermediaries is the Digital Services Act (DSA)³, which was approved by the European Union on 19 October 2022 with the aim of regulating digital platforms to ensure greater security and protection of rights online.

The drafting of the DSA, its negotiation and subsequent entry into force has been a delicate balancing act due to the difficulty of reconciling the various interests at stake⁴. It is particularly important to consider the socio-political and economic weight of the platforms. The necessity to regulate digital platforms is becoming increasingly apparent, as these entities have evolved into significant actors within the public sphere and the global economy⁵. They have an unparalleled level of influence over communication, a phenomenon without precedent in history. As the European Commission observes⁶ large online platforms function as gatekeepers, wielding considerable influence over both the flow of information and the dynamics of digital markets. The concentration of economic and social power in a small number of hands poses significant risks to democratic pluralism and the protection of fundamental rights, in particular freedom of expression, the right to information and user privacy. Concurrently, the proliferation of illegal and misleading content, algorithmic manipulation, opaque content moderation practices and non-transparent forms of targeted advertising have generated negative externalities that existing legal frameworks have been unable to address effectively.

In light of the potential risks to fundamental rights and online security in this context, the DSA seeks to provide a balanced legal response by establishing a co-regulatory system that goes beyond traditional self-regulatory systems based on soft law⁷. This new system involves shared supervisory powers by an institutional network made up of the European Commission, Member States, newly created institutions and also trusted flaggers⁸, meant to develop external private supervision. The implementation of the DSA is not only influenced by this institutional system, but also by the intersections of different regulations in force and by the sectoral constraints of the DSA, that involve transparency obligations required to the online platforms. These factors align with the clusters of reasons behind non-compliance and suboptimal enforcement suggested by Scholten⁹ and can be used

³ REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance) DOUE L 277/1, 27 November 2022.

⁴ As a result, “contrasting interpretations” have emerged regarding the justification and intensity of obligations for platforms and service providers. *Vid.* Aina Turillazzia; Mariarosaria Taddeo; Luciano Floridi and Federico Casolaria, ‘The digital service act: an analysis of its ethical, legal, and social implications’ [2023] 15 (1) *Law, Innovation and Technology*, p. 103, <https://doi.org/10.1080/17579961.2023.2184136> [Accessed 24 November 2025].

⁵ Stigler Committee on Digital Platforms ‘Final report’ (2019). Available at: <https://www.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler-center.pdf>. [Accessed 2 September 2025].

⁶ European Commission. COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Shaping Europe's digital future, COM (2020) 67 final, p. 8.

⁷ Until the DSA came into force, Directive 2000/31/EC on electronic commerce had been the benchmark in this area. This framework's inadequacy was evident in Member States' inability to provide uniform responses to transnational phenomena, leading to regulatory fragmentation, legal uncertainty, and competitive asymmetries. The absence of clear intermediary liability rules and transparency obligations meant much digital content governance was left to the platforms themselves in an ineffective self-regulatory model.

⁸ Trusted flaggers are individuals or organisations independent from platforms that are afforded prioritised access to the content moderation process of online platforms based on expertise in content areas. The status is afforded by the Digital Services Coordinator of the Member State pursuant Article 22 DSA.

⁹ 1) Extent of disagreement at the law-making stage; 2) complex legal context, 3) multiplicity of decision-making actors and points; 4) linguistic ambiguity and 5) value pluralism. *Vid.* Miroslava Scholten, ‘Let us wait and see first how the

to explain the difficulties that arise at the enforcement of the DSA. The working hypothesis underpinning this study is that the European legislator's decision to prioritise autonomy and flexibility at institutional, material and procedural levels shapes the implementation of the regulation. The system depends on the effective coordination of public bodies and the favourable attitude of the platforms and providers. Considering this, the study assumes that platforms and providers will naturally tend to leverage legal ambiguity in select aspects of the system to circumvent controls and to reduce the effectiveness of the regulation. Along with this issue (and connected to it at some point), the study identifies implementation difficulties arising from the co-regulatory model and suggests possible measures to strengthen the effectiveness of the cooperation principle in the implementation of the DSA.

To justify this hypothesis, Section II analyses the co-regulation system from a doctrinal perspective in order to define and evaluate the institutional model chosen by the DSA. This analysis will provide insights to evaluate whether the system's principle of cooperation is being satisfied and is useful. Having evaluated the institutional system, Section III turns its attention to material and procedural aspects. Adopting a practical perspective, it examines what has happened since the regulation came into force. In other words, it assesses the proceedings that have been initiated and the attitude of the platforms involved. In view of the possible infringements identified by the Commission, it will select the aspects of the regulation that generate the most conflict. The study will attempt to determine whether these conflicts stem from the regulation's vagueness or the platforms' attitude. Consequently, it will be possible to ascertain whether the underlying hypothesis of the study is correct, either fully or partially. Finally, Section IV will address the identified problems by presenting a catalogue of conclusions that aims to strike a balance between autonomy and effectiveness, as identified by the European legislator when designing the DSA.

II. The co-regulation system and the governance model

1. Overview and legislative procedure of the DSA

The approval process for the DSA reflects both the technical complexity of the regulated area and the political sensitivity surrounding the governance of digital environments. The genesis of the regulation can be traced back to the 2019 European Digital Strategy, in which the new Commission chaired by Ursula von der Leyen announced the need for a thorough update of the regulatory framework for online services, in line with the principles of digital sovereignty and the protection of fundamental rights in the digital sphere. In February 2020, the Commission presented the Communication Shaping Europe's Digital Future, which already indicated the intention to revise the 2000 E-Commerce Directive and design a new regime applicable to digital intermediaries, accompanied by a specific framework for large platforms.

On 15 December 2020, the proposal for a Digital Services Regulation was formally presented alongside the Digital Markets Act (DMA), as complementary instruments. The subsequent legislative debate was intense in both the European Parliament and the Council, reflecting the need to reconcile the protection of rights with the preservation of innovation and competitiveness in the European digital economy. After almost eighteen months of deliberations and amendments, a provisional political agreement was reached between the Parliament and the Council on 23 April 2022¹⁰, which was finally ratified in July 2022. The final text of the DSA was officially published on 27 October 2022 and entered into force twenty days after its publication. Its implementation was structured in stages as stated in Articles 92 and 93 of the DSA: the general obligations became enforceable

law does not work? "Better regulation" can do it better!' Paper presented at The First Annual conference of Jean Monnet Network on EU Law Enforcement, London, United Kingdom, 2025.

¹⁰ European Commission. 'Digital Services Act: Council and European Parliament provisional agreement for making the internet a safer space for European citizens' (Press release 22 April 2022). Available at: <https://www.consilium.europa.eu/en/press/press-releases/2022/04/23/digital-services-act-council-and-european-parliament-reach-deal-on-a-safer-online-space/> [Accessed 18 September 2025].

from 17 February 2024, while very large online platforms¹¹ and very large online search engines (hereinafter referred as to VLOPs and VLOSEs) were subject to enhanced direct supervision by the European Commission from August 2023.

The timeline therefore shows a broad and carefully designed deliberative process in which the European Union sought to balance conflicting interests: on the one hand, the urgency of strengthening protection against illegal content and opaque practices by platforms; on the other, the need to ensure a predictable and stable framework that would not discourage technological innovation. The legal assessment must consider the significant impact of corporate lobbying on the implementation of the DSA. Attention has been paid to this issue¹² providing a detailed analysis of how major digital platforms deployed this strategy during the legislative process leading to the adoption of the DSA. The authors identify five core influence strategies employed¹³ to shape the regulatory debate, amplify industry-friendly narratives, and mitigate provisions perceived as threatening to their business models—particularly around content liability, targeted advertising, and platform interoperability. While the platforms exerted considerable influence—managing to soften or amend certain elements of the DSA—the legislation ultimately retained many of its core regulatory obligations.

The DSA is the subsequent result of a political compromise to create a harmonised framework to protect fundamental rights, overcome regulatory fragmentation and ensure fair competition and confidence in the digital single market. In this sense, the DSA represents a paradigm shift, displacing responsibility for ensuring safety and transparency in the digital space from a model of minimal responsibility to one of regulated, public due diligence (Recitals 40 and 41; Chapter III of the DSA) which integrates the indispensable collaboration of civil society¹⁴.

2. The multi-layered governance model

The governance model designed by the DSA reflects the European Union's desire to establish a multi-level supervisory system capable of combining the transnational dimension of large platforms with the necessary proximity of national oversight. However, this institutional complexity can partially hinder the enforcement of the regulation, thus coordination efforts should be made in order to ensure coherent decisions.

In view of the inadequacy of corporate self-regulation schemes, the regulation establishes a structure of graduated responsibility and public supervision that aims to ensure both the effectiveness and democratic legitimacy of regulation. The DSA introduces a set of obligations that are scaled according to the nature and size of the provider. While basic intermediation services are subject to minimum obligations, online platforms, and in particular those known as VLOPs and VLOSEs face a stricter regime of transparency, systemic risk management and independent audits as set out in Articles 33-43 of the DSA. This proportional approach seeks to avoid an excessive burden on small and medium-sized operators, while recognising the greater impact of dominant players on society and the digital economy.

¹¹ Defined in Article 33 as those platforms with more than 45 million active monthly users within the European Union (equivalent to 10% of the Union's population). The list of designated VLOPs can be accessed at: https://ec.europa.eu/commission/presscorner/detail/es/ip_23_2413 [Accessed 25 September 2025].

¹² Robert Gorwa; Grzegorz Lechowski, Daniel Schweiß, 'Platform lobbying: Policy influence strategies and the EU's Digital Services Act', [2024] 13(2) *Internet Policy Review*, p. 3. Available at: <https://doi.org/10.14763/2024.2.1782>. [Accessed 20 September 2025].

¹³ Direct access lobbying, coalition building, stakeholder mobilisation, public relations campaigns, and the funding of research. In practice, technology companies have become the biggest spenders on lobbying in EU institutions, surpassing the pharmaceutical, fossil fuel and financial sectors. See: Mared G. Jones, 'Tech companies' lobbying in Brussels has increased to €113 million a year as efforts to influence the EU's digital policy intensify, according to new data published on Monday by NGOs Corporate Europe Observatory (CEO) and LobbyControl' (*Euronews*, 11 September 2023. Available at: <https://www.euronews.com/my-europe/2023/09/11/tech-companies-spend-more-than-100-million-a-year-on-eu-digital-lobbying> [Accessed 20 September 2025].

¹⁴ Carmen Colomina Saló, Susana Pérez-Soler, 'Desorden informativo en la UE: construyendo una respuesta normativa' [2022] 131 *Revista CIDOB d'Afers Internacionals*, p.153, DOI: <https://doi.org/10.24241/rcai.2022.131.2.141>

Traditionally, direct implementation has been assigned to Member States for reasons of sovereignty and in accordance with the principle of autonomy. This means that the regulations are addressed to private recipients, whose compliance is monitored by national public bodies¹⁵. Within the framework of the DSA, following an interesting institutional evolution sponsored by competition law, a composite administrative implementation model based on the principle of cooperation is being developed. Supervision is shared between national authorities and the European Commission. Each Member State must appoint a National Digital Services Coordinator (hereinafter referred as to DSC), responsible for implementing and enforcing the regulations in their jurisdiction, as well as cooperating with their counterparts in other States. The Commission, for its part, assumes enhanced powers with regard to VLOPs and VLOSEs, given their cross-border nature and the magnitude of the systemic risks they generate. This design, based on “the idea of partnership”¹⁶ reflects a commitment to regulatory subsidiarity: Member States retain a central role in the supervision of ordinary operators, while the Union exercises direct supervision over global digital giants. The role of the Commission is technically reinforced by the support of other bodies, such as the European Centre for Algorithmic Transparency, which contributes to the assessment of algorithmic use, their functioning, impact, and explainability from a risk-based perspective¹⁷.

In order to coordinate the actions of national authorities and ensure consistency in the application of the Regulation, the DSA creates the European Board for Digital Services (hereinafter referred as to EBDS), a collegiate body composed of DSC and chaired by the Commission. The EBDS performs advisory, coordination and best practice exchange functions (Articles 61-63 of the DSA) becoming a key institutional space for to addressing value pluralism and for consolidating common digital governance in the European Union.

3. Autonomy and institutional coordination: two (due) sides of the same coin

The coordination system between public authorities requires the ability of the different institutional actors to adhere to congruent implementation policies¹⁸. In the field of this study, and unlike other sectoral regulations such as data protection, the principle of institutional autonomy takes on a prominent role. Indeed, Article 49 of the DSA grants the Member States freedom in determining the national authority and the supervisory tasks and proceedings to be conducted. They are consequently entitled to appoint multiple competent authorities with specific tasks related to the DSA (i.e., Data Agencies, Regulators on Media Law), that should cooperate under the responsibility of the DSC. This translates into diverse institutional structures and differentiated capabilities, both technical and financial¹⁹. Despite certain nuances set out to proportionally harmonise this institutional structure²⁰, these divergent speeds combined with the mere supporting role of the EBDS²¹, have the potential

¹⁵ Ton Duijkersloot, Rob Widdershoven, ‘Administrative law enforcement of EU law’ in Miroslava Scholten (ed.), *Enforcement of EU Law. Research Handbooks in European Law* (Elgar, UK 2023) p. 38.

¹⁶ Martina Anzini, Petra Jeney, Godefroy de Moncuit, Juan Diego Ramírez-Cárdenas, ‘Making European Policies Work Evolving Challenges and New Approaches in EU Law Enforcement’ (*European institute of Public Administration*, 2021) p. 4. Available at: <https://www.eipa.eu/wp-content/uploads/2025/03/Edward-Best-Making-European-Policies-Work-Evolving-Challenges.pdf> [accessed 19 November 2025].

¹⁷ This structure somehow connects with the correlation between regulated industries and institutional design described by Van Kreijl, who suggests public enforcement via EU agencies in concentrated industries and national enforcement in dispersed industries. See: Laurens Van Kreijl, ‘EU agencies or networks of national authorities’ in Miroslava Scholten (ed.), *Enforcement of EU Law. Research Handbooks in European Law* (Elgar UK 2023), pp. 179-181.

¹⁸ Miroslava Scholten, ‘Let us wait...’, pp. 9-10.

¹⁹ Some national sectoral authorities, that have assumed the role of DSC, have called for greater resources to enable them to perform their function adequately. It is the case of the Spanish authority. See: Comisión Nacional de los Mercados y la Competencia, ‘La CNMC pide más medios para hacerse cargo de la regulación de servicios digitales y medios de comunicación’ (Press release 12 September 2025). Available at: <https://www.cnmc.es/prensa/gobernanza-democratica-20250912> [Accessed 23 November 2025].

²⁰ Requirements and functions of DSC set out in Articles 50 and 51 of the DSA, pursuant principle of conferral (Article 5(2)TUE). For instance, the requirement for independence.

²¹ The EBDS can only issue opinions, recommendations or advice, and therefore it cannot compel Member States or their DSCs to take action. Furthermore, insofar as it is limited to supporting the Commission in its work of supervising platforms (under Article 56 DSA), it does not actually coordinate the most critical area of the DSA, being relegated to a supporting role. See: Jens-Peter Schneider, Kester Siegrist and Simon Oles, ‘Collaborative Governance of the EU Digital Single Market Established by the Digital Services Act’, in Herwig C.H. Hofmann and Felix Pflücke (eds), *Governance*

to result in fragmentation in the implementation of European law²² unless clear cooperation protocols are established.

The DSA establishes two levels of cooperation²³ dependant on the dual role of the Commission (supranational enforcement) and DSCs (national oversight). The first is horizontal cooperation between DSCs, involving mutual assistance, cross-border cooperation, and joint investigations. The second is vertical cooperation between the European Commission and DSCs, whereby the DSCs support the Commission in supervising VLOPs and VLOSEs. However, at least at present, this institutional structure still lacks sufficiently robust coordination mechanisms. A significant example is the poor empowerment or the delay in the appointment of DSC (and even the absence of such an appointment). In September 2025, following the initiation of infringement proceedings, the Commission referred five Member States to the Court of Justice of the European Union for non-compliance: Poland for failing to appoint a coordinator and the Czech Republic, Cyprus, Spain and Portugal for failing to provide the appointed coordinators with the necessary powers to carry out their work of promoting and driving forward the implementation of the regulation²⁴. Along with this effect, studies reveal significant deficiencies in the status of independence of DSC. In many cases, limitations do not stem from formal dependence, which would be openly contrary to the spirit of the DSA. It is a more subtle form of conditioning, derived from financial dependence²⁵. In addition, there are insufficient safeguards to restrict political interference and “revolving door” policies. DSCs also face resource shortages and recruitment difficulties, forcing them to rely on informal enforcement due to delays in the passage of national laws.

It is therefore essential to develop active coordination to counterbalance the tensions generated by the centrifugal and centripetal forces at play, particularly if Member States prioritise different risks or enforcement styles. In this function, the EBDS can play a leading role. A salient example of this phenomenon is evidenced by the coordinated efforts to protect minors from the harm of pornography²⁶.

4. Coordination across overlapping sectoral regulations

Alongside the growth of public bodies specifically established to oversee the implementation of the regulation, the institutional framework of the DSA is further influenced by the breadth of its material scope. The activity of digital platforms and services has the potential to impact multiple areas, resulting in the concurrent application of pre-existing regulatory frameworks²⁷, such as consumer protection law, DMA, data law or Regulation on Artificial Intelligence²⁸ (hereinafter AI Act), particularly in algorithmic systems used for content

of *Automated Decision-Making and EU Law* (Oxford 2024; online edn Oxford Academic 16 August 2024), <https://doi.org/10.1093/9780198919575.003.0004>, [accessed 22 November 2025], pp. 111 and 113.

²² Simona Demková, Giovanni De Gregorio, ‘The Looming Enforcement Crisis in European Digital Policy: A rule-of-law centered path forward’. (*VerfBlog*, 10 February 2025). Available at: <https://verfassungsblog.de/the-looming-enforcement-crisis-ai-dsa-eu/>, DOI: [10.59704/c4fc2ec9cb2b9ba5](https://doi.org/10.59704/c4fc2ec9cb2b9ba5) [Accessed 20 September 2025].

²³ Pietro Mattioli, ‘Navigating the Complexities of the DSA’s Enforcement Framework: Sincere Cooperation in Action?’ [2025], 21 (1) *Utrecht Law Review*, pp. 22-24. DOI: <https://doi.org/10.36633/ulr.1074>

²⁴ None of these States has established a penalty system for possible breaches of the requirements set out in the DSA. *Vid.* European Commission, ‘Commission decides to refer CZECHIA, SPAIN, CYPRUS, POLAND and PORTUGAL to the Court of Justice of the European Union due to lack of effective implementation of the Digital Services Act’ (Press Release 7 May 2025). Available at: <https://digital-strategy.ec.europa.eu/en/news/commission-decides-refer-czechia-spain-cyprus-poland-and-portugal-court-justice-european-union-due> [Accessed 17 September 2025].

²⁵ The Civil Liberties Union for Europe – Liberties, ‘Monitoring the implementation of the Digital Services Act. The independence of Digital Services Coordinators’ (January 2025). Available at: <https://www.liberties.eu/f/0o11bo> [Accessed 21 September 2025].

²⁶ European Commission, ‘The European Board for Digital Services launches a coordinated action to reinforce the protection of minors as regards pornographic platforms’ (Press release 27 May 2025). Available at: <https://digital-strategy.ec.europa.eu/en/news/european-board-digital-services-launches-coordinated-action-reinforce-protection-minors-regards> [Accessed 19 September 2025].

²⁷ Bengi Zeybek and Joris Van Hoboken, ‘The Enforcement Aspects of the DSA, and its Relation to Existing Regulatory Oversight in the EU’ (DSA Observatory, February 2024). Available at: <https://dsa-observatory.eu/2022/02/04/the-enforcement-aspects-of-the-dsa-and-its-relation-to-existing-regulatory-oversight-in-the-eu/> [Accessed 6 September 2025].

²⁸ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU)

moderation and recommendation²⁹. This is provided for in Article 2(4) of the DSA, which merely recognises the simultaneous application of other regulations³⁰ to the provision of digital services³¹. The complexity of the legal context creates risks of fragmentation and regulatory and institutional duplication. Consequently, there is an additional level of cross-sectoral coordination required between different competent authorities and supervisors, that can share experience and good practices to ensure rational, effective and proportional enforcement³². At the strictly national level, Article 49(2) of the DSA calls for cooperation between competent authorities under the responsibility of the DSC³³. Additionally, in proceedings under the DSA where data protection is at stake, the European Data Protection Board refers to the necessary coordination between the digital services coordinator and the data protection authorities³⁴. However, there is room for further cooperation mechanisms in this area. Specifically at the EU level, the establishment of soft law measures could be beneficial in promoting more effective cross-sectoral implementation of the DSA. Such measures could include the issuance of protocols and good practices in investigation powers and information exchange, among others.

III. Implementation of the DSA by VLOPs and VLOSEs and the enforcement procedure

As already stated, the effectiveness of this model of multilevel coordination is contingent on two factors, the first refers to the institutional public system and it has been analysed in the previous section. The second factor refers to the attitude of the recipients of the regulation, specifically on the willingness of platforms to comply with a regulation that curtails their intrinsic autonomy. Supervision as an implementation mechanism is based on a fundamental assumption: namely, that the recipients of the DSA (platforms and providers) will cooperate with the authorities and will comply with the regulation given the regular public supervision to which they are subjected by it³⁵. Is this assumption being fulfilled? The answer to this question requires analysing the effectiveness of the DSA's implementation. When suggesting criteria for effectiveness in comparative terms, we face a fundamental problem: we do not have a comparative picture (before and after) the enforcement of the DSA. Therefore, taking a practical perspective, this study resets the clock to zero from the entry into force of the DSA and evaluates the evolution in these first stages. We will start with a classic analysis, which involves examining the proceedings initiated for non-compliance and extracting from them the main possible

2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (Text with EEA relevance).

²⁹ Rosa Cernada Badia, 'Grandes plataformas y sistemas de inteligencia artificial destinados a la influencia política: La intersección entre la "Ley de Servicios Digitales" y el Reglamento de Inteligencia artificial desde la perspectiva del riesgo' in Lorenzo Cotino Hueso, Pere Simón Castellanos (dirs.), *Tratado sobre el Reglamento de Inteligencia Artificial de la Unión Europea* (Aranzadi, Madrid (Spain) 2024), pp. 373-394. Available at: <https://roderic.uv.es/bitstreams/7db860c6-540d-4e89-ab4f-363b7cde7024/download>. [Accessed 14 September 2025].

³⁰ TikTok and Meta's algorithmic design raises issues under the GDPR's fairness and transparency principles, while recommender system audits overlap with AI Act.

³¹ Pursuant Art. 2(4) of the DSA: «This Regulation is without prejudice to the rules laid down by other Union legal acts regulating other aspects of the provision of intermediary services in the internal market or specifying and complementing this Regulation, in particular, the following: (a) Directive 2010/13/EU; (b) Union law on copyright and related rights; (c) Regulation (EU) 2021/784; (d) Regulation (EU) 2019/1148; (e) Regulation (EU) 2019/1150; (f) Union law on consumer protection and product safety, including Regulations (EU) 2017/2394 and (EU) 2019/1020 and Directives 2001/95/EC and 2013/11/EU; (g) Union law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC; (h) Union law in the field of judicial cooperation in civil matters, in particular Regulation (EU) No 1215/2012 or any Union legal act laying down the rules on law applicable to contractual and non-contractual obligations; (i) Union law in the field of judicial cooperation in criminal matters, in particular a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters; (j) a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings».

³² Jens-Peter Schneider, Kester Siegrist and Simon Oles, Op. cit., pp.114-116.

³³ «The Digital Services Coordinator shall in any event be responsible for ensuring coordination at national level in respect of those matters and for contributing to the effective and consistent supervision and enforcement of this Regulation throughout the Union».

³⁴ European Data Protection Board, *Guidelines 3/2025 on the interplay between the DSA and the GDPR*. Version 1.1 Adopted on 11 September 2025, pp. 36-37.

³⁵ Ton Duijkersloot, Rob Widdershoven, Op. cit., pp. 39-40.

infringements identified by the Commission. Based on this examination, we will analyze the weaknesses of the DSA in terms of enforcement and propose solutions, even if they are only partial, to improve it.

1. Enforcement procedure applicable to VLOPs and VLOSEs: the European Commission as direct enforcer

The purpose of the DSA revolves around the need to build a safer, more transparent and fairer digital environment that guarantees both user protection and the preservation of a competitive single market in the digital sphere. In this regard, the regulation pursues the essential objective of protecting fundamental rights in the digital environment, including freedom of expression and information³⁶, by establishing due diligence obligations for intermediaries and, in particular, for online platforms. Along with this, the DSA seeks for transparency in the operation of platforms, particularly in relation to recommendation algorithms and personalised advertising. The aim is to reduce users' exposure to illegal and harmful content, ensure transparent moderation processes and provide for effective complaint and redress mechanisms. The regulation imposes information obligations that seek to shed light on the logic behind content recommendation systems and set limits on opaque segmentation practices, especially when they affect minors or sensitive data categories.

The protocol for monitoring potential breaches of the obligations established in the DSA for the VLOPs is overseen by the European Commission, which initiates the process by evaluating information obtained during its monitoring or from reliable sources. This phase involves the analysis of mandatory transparency reports, independent audits, and complaints received through the DSA whistleblowing system. In October 2023, the Commission initiated its inaugural DSA compliance investigation by issuing requests for information to specific VLOPs. These requests for information represent a fundamental investigative tool, with the potential to result in financial penalties amounting to 1% of the entity's annual global turnover for responses that are deemed to be incorrect, misleading or incomplete.

In the event that the Commission suspects non-compliance, it may decide to open an investigation and deploy its investigative tools. Specifically, it may conduct interviews, request additional information or, more expeditiously, exercise its powers by conducting inspections on the premises or ordering access to data or algorithms. The objective of this activity is to collate the requisite and consistent evidence to ascertain whether there has been a breach of the regulatory framework, and the requirements contained in the DSA. Furthermore, at any time during the investigation, if the Commission considers that there is urgency due to the risk of serious harm to users of the service, it may adopt proportionate and temporary provisional measures. Examples of such measures include changes to recommendation systems, increased monitoring of specific keywords, or orders to terminate or remedy alleged infringements.

In case the Commission entertain suspicions of a potential breach of the DSA at the conclusion of the investigative phase, it may proceed with the initiation of formal proceedings. Prior to the adoption of a breach decision, the imposition of fines or periodic penalty payments, the Commission is obligated to provide the VLOP or VLOSE in question with the opportunity to be heard on its preliminary findings. If a breach of the DSA is definitively established, the Commission may adopt a decision imposing various penalties, which include: i) fines of up to 6% of annual global turnover; ii) Periodic penalties of up to 5% of average daily global turnover for each day of delay and iii) as a last resort, temporary suspension of service following a specific procedure.

2. The major cases: X, Tik Tok, AliExpress, Meta, Temu

Pursuant the enforcement powers discussed in the previous section, the European Commission has initiated diverse formal proceedings against ten large platforms for breaches of the DSA since 2023. The most significant

³⁶ As stated in recitals 3 and 4 of the DSA.

cases include proceedings against X (Twitter) initiated in December 2023, TikTok in February 2024, AliExpress in March 2024, Meta (Facebook and Instagram) in April 2024, Temu in October 2024 and against four pornographic platforms (Pornhub, Stripchat, XNXX and XVideos) in 2024³⁷. These proceedings, still ongoing, provide a valuable laboratory for observing how the DSA's provisions operate in practice, how institutional competences interact, and where gaps or tensions emerge.

2.1. X (formerly Twitter)

The Commission's proceedings against X are wide-ranging, covering disinformation, illegal content, and algorithmic transparency³⁸. In its preliminary findings of July 2024, the European Commission identified breaches of three specific provisions of the DSA by platform X. First, it considered that the platform had engaged in the use of "dark patterns"³⁹ within its paid account verification system. By allowing any user to obtain verification through subscription, the mechanism was found to impair individuals' capacity to make free and informed judgments regarding the authenticity of accounts and the reliability of the content they encounter. Such practices were assessed not only as a violation of Article 25 of the DSA, which prohibits dark patterns, but also as incompatible with the fairness principle enshrined in Article 5.1.a) of the General Data Protection Regulation⁴⁰ (GDPR), which explicitly requires that manipulative design strategies should not be employed in decisions concerning the processing of personal data.

Secondly, the Commission determined that X had failed to comply with Article 39 of the DSA, which imposes obligations of transparency in advertising. Specifically, the platform did not maintain a repository of advertisements that was both reliable and searchable, thereby undermining algorithmic transparency and constraining the capacity of regulators and researchers to identify and mitigate risks linked to online advertising practices.

Finally, the preliminary assessment concluded that X had violated Article 40(12) of the DSA by unduly restricting access to public data for researchers who were otherwise eligible under the DSA framework. This restriction was regarded as an obstacle to independent academic inquiry into systemic risks, depriving oversight institutions and the wider research community of critical tools to evaluate the societal impact of the platform's services.

2.2. Tik Tok

TikTok is perhaps the most emblematic case to date. The legal proceedings against TikTok are organised around three primary investigations, which reflect the multidimensional complexity of digital risks and the various dimensions of the concept of systemic risk, which is still in the process of being defined. Each of these proceedings would require a dedicated study however, for the purposes of this study, the aspects investigated by the European Commission will be highlighted in order to identify the target area of control in the implementation of the DSA.

³⁷ European Commission has taken investigatory steps in respect of other platforms (i.e. Temu or LinkedIn). The main enforcement activities of the European Commission concerning VLOPs are available at: <https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses> [Accessed 15 September 2025].

³⁸ European Commission, 'Commission opens formal proceedings against X under the Digital Services Act' (Press release 18 December 2023). Available at: <https://digital-strategy.ec.europa.eu/en/news/commission-opens-formal-proceedings-against-x-under-digital-services-act> [Accessed 15 September 2025].

³⁹ The use of dark pattern is a breach also identified in the proceedings against Temu. The Commission decision initiating proceedings against Whaleco Technology Limited and Temu service is available at: <https://ec.europa.eu/newsroom/dae/redirection/document/110873> [Accessed 15 September 2025].

⁴⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance).

The investigation conducted in the first proceedings⁴¹ (February 2024) revealed structural deficiencies in TikTok's age verification systems. Despite the platform's formal prohibition on access by individuals under the age of 13, the practice of self-verification through the declaration of one's date of birth is evidently inadequate. The Commission determined that the verification measures did not meet the criteria of “reasonable, proportionate and effective”, thereby contravening the obligations stipulated in Article 28 of the DSA. The gravity of this infringement is further exacerbated by the platform's response, which involved the removal of over 7 million accounts suspected of belonging to individuals under the age of 13 during the initial quarter of 2021, thereby underscoring the magnitude of the issue.

Secondly, the Commission's investigation focused on the “rabbit hole effect”⁴² generated by TikTok's recommendation algorithms. This phenomenon, where the algorithm progressively leads to more extreme or addictive content, constitutes a violation of Articles 34 and 35 of the DSA, which require the assessment and mitigation of systemic risks arising from algorithmic design. In particular, the deliberate pursuit of user “hooking” through algorithmic manipulation techniques raises fundamental questions about the compatibility of certain business models with European fundamental rights.

Finally, the preliminary conclusions of May 2025 on this first investigation identify specific violations of Article 39 of the DSA on advertising transparency. TikTok does not provide sufficient information on the content of advertisements, target users or funders, and its repository does not allow for comprehensive searches. This deficiency is particularly serious in the context of elections and democratic security.

The second investigation focused on the *TikTok Lite Rewards Programme*, which the platform launched in April 2024⁴³. This is a reward system for viewing content that constitutes direct monetisation of user attention. After analysing the programme, the Commission determined that the monetisation of attention should be considered a systemic risk and, consequently, requires the prior risk assessment of Articles 34 and 35 of the DSA (which the platform did not carry out). The response was unequivocal⁴⁴: TikTok voluntarily suspended the programme in April 2024 and made a legal commitment to permanently withdraw it in August 2024. This case establishes a precedent regarding the limits of innovation in the context of the DSA's guiding principles.

In December 2024, following the annulment of the Romanian presidential elections, the third investigation was launched, addressing the geopolitical dimension of large platforms. It was prompted by the work of the Romanian intelligence services, which identified evidence of Russian interference via TikTok. This evidence would partly explain the unexpected victory of candidate Călin Georgescu, who used a campaign based on viral

⁴¹ European Commission, ‘Summary note on the TikTok decision’ (19 February 2024). Available at: <https://ec.europa.eu/newsroom/dae/redirection/document/102958> [Accessed 20 September 2025].

⁴² The *rabbit hole effect* designates a digital consumption pattern in which users begin engaging with online material on a specific subject but progressively diverge into unrelated or unexpected content streams over extended periods of time. This process mirrors the allegorical descent of Alice into the rabbit hole in Lewis Carroll’s narrative, symbolizing a shift from an initial point of entry to a vast, unpredictable informational landscape. In contemporary digital platforms, the effect is amplified by algorithmic recommendation systems, which perpetuate cycles of suggested content that intensify user immersion and often lead to significant expenditure of attention and temporal resources. *Vid.* Jennifer A Harriger, Joshua A Evans, J. Kevin Thompson, Tracy L. Tylca, ‘The dangers of the rabbit hole: Reflections on social media as a portal into a distorted world of edited bodies and eating disorder risk and the role of algorithms’ [2022] 41 *Body Image*, pp. 292-297.

⁴³ European Commission. «Commission opens proceedings against TikTok under the DSA regarding the launch of TikTok Lite in France and Spain, and communicates its intention to suspend the reward programme in the EU». Press Release 22 April 2024. Available at: <https://digital-strategy.ec.europa.eu/en/news/commission-opens-formal-proceedings-against-x-under-digital-services-act> [Accessed 15 September 2025].

⁴⁴ European Commission. Commission decision initiating proceedings pursuant to Article 66(1) of Regulation (EU) 2022/2065. Brussels, 22 April 2024 C(2024)2808 final. Available at: <https://ec.europa.eu/newsroom/dae/redirection/document/108626> [Accessed 15 September 2025].

videos. This investigation⁴⁵ examined whether TikTok fulfilled its obligations to properly assess and mitigate the risks of foreign interference in electoral processes. Specifically, the committee's work focused on the use of technological governance systems to test Europe's ability to defend its democratic sovereignty against hybrid threats.

2.3. AliExpress

Operated by the Chinese conglomerate Alibaba, AliExpress case reveals the DSA's interaction with consumer protection and product safety law. The Commission's concerns focused on the persistence of unsafe and counterfeit products—ranging from toys and electronics to medical devices—circulating on the platform despite notice obligations and established reporting channels⁴⁶.

Under Articles 16 to 22 of the DSA, platforms must implement accessible notice-and-action mechanisms enabling users and authorities to flag illegal products or content. Moreover, in the context of e-commerce systemic risk assessments required in Articles 34 and 35 entail identifying risks linked to fraudulent traders, product safety breaches, and lack of traceability in supply chains. The AliExpress proceedings suggest suspected failures in these areas, particularly in the adequacy of seller verification and the design of takedown mechanisms.

This case illustrates the DSA's function as a bridge between sectoral consumer safety instruments—such as the General Product Safety Regulation (GPSR)⁴⁷ and the Market Surveillance Regulation⁴⁸ and horizontal platform regulation. Unlike the GPSR, which targets producers and distributors, the DSA extends accountability to intermediary platforms whose design choices (e.g. interface architecture, trader onboarding, recommender systems) may exacerbate consumer risks. The AliExpress case also exposes the transnational enforcement challenge. While Alibaba is headquartered in China, the DSA asserts jurisdiction based on service provision to European Union consumers, requiring cooperation mechanisms that transcend traditional territorial limits.

2.4. Meta

Meta's Instagram is facing proceedings over its algorithmic design and the psychological impact on minors⁴⁹. In April 2024 the European Commission opened proceedings against the platform to scrutinise Meta's handling of deceptive advertising and disinformation, examining whether the company has adequately assessed and mitigated systemic risks to civic discourse, electoral processes, and user protection, as mandated by the DSA's risk framework. In line with this, the European Commission analysed the compatibility of Meta's political content policy⁵⁰ with transparency requirements and with the obligation to address risks of manipulation in the political and electoral sphere.

⁴⁵ European Commission, 'Commission opens formal proceedings against TikTok on election risks under the Digital Services Act' (Press Release 17 December 2024). Available at: <https://digital-strategy.ec.europa.eu/en/news/commission-opens-formal-proceedings-against-tiktok-election-risks-under-digital-services-act> [Accessed 15 September 2025].

⁴⁶ European Commission, 'Commission opens formal proceedings against AliExpress under the Digital Services Act' (Press release 14 March 2024). Available at: <https://digital-strategy.ec.europa.eu/en/news/commission-opens-formal-proceedings-against-aliexpress-under-digital-services-act> [Accessed 17 September 2025].

⁴⁷ Regulation (EU) 2023/988 of the European Parliament and of the Council of 10 May 2023 on general product safety [2023] OJ L135/1.

⁴⁸ Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products [2019] OJ L169/1.

⁴⁹ European Commission, 'Commission opens formal proceedings against Meta under the Digital Services Act related to the protection of minors on Facebook and Instagram' (Press release 16 May 2024). Available at: <https://digital-strategy.ec.europa.eu/en/news/commission-opens-formal-proceedings-against-meta-under-digital-services-act-related-protection> [Accessed 16 September 2025].

⁵⁰ Available at: <https://transparency.meta.com/es-es/features/approach-to-political-content/> [Accessed 16 September 2025].

Considering the transparency and the availability of information, the Commission focused on Meta's discontinuation of *CrowdTangle* service without providing a suitable alternative for third-party, real-time election monitoring. This decision raised concerns about the platform's compliance with obligations relating to risk mitigation and data access for independent scrutiny. And finally, this first investigation proceeding examined the effectiveness of Meta's notice-and-action mechanisms and its internal complaint-handling system, questioning whether these tools were sufficiently accessible, user-friendly, and reliable to allow individuals to report illegal content and seek redress. These issues have been further compounded by Meta's recent declaration of its intent to discontinue professional content verification, opting instead for the implementation of "community notes"⁵¹. This decision has led to significant concerns regarding the future adherence to DSA obligations.

Un month later, in May 2024, the Commission opened new proceedings against Meta in order to evaluate the impact of the service in minors. The Commission suspected breaches of the DSA's systemic risk obligations, particularly in relation to the addictive qualities of the feed and recommendation systems; risks of social comparison, body image pressure, and exposure to harmful content and insufficient parental controls and transparency measures⁵². Particularly, the Commission identified systemic deficiencies in Meta's age verification systems, which rely solely on self-declarations of age. These deficiencies are unreasonable, given that a self-declaration system is clearly insufficient for protecting minors from accessing inappropriate content.

Furthermore, the default settings of the recommendation systems do not ensure a high level of protection for minors. The algorithms are optimised for engagement and advertising revenue without adequately considering the impact on the physical and mental well-being of young users. Consequently, they may encourage behavioural addictions in children and create rabbit hole effects. In this sense, DSA's implementation shows potential to operationalise "safety by design" as a legal standard, requiring structural modifications in recommender systems and interface design.

2.5. *Temu*

The Temu case also illustrates the interaction between the DSA and consumer protection and product safety law. However, this case is of particular significance when assessing the inadequacy of the risk assessment report. The Commission decided to initiate formal proceedings⁵³ against the platform in October 2024, considering that it had not adequately identified the risks arising from its activity. Specifically, the dissemination of illegal, unsafe and non-compliant products. When preparing its report, Temu relied on generic industry data rather than specific evidence from the platform or studies that did not actually cover the time that Temu had been available in the European Union. The report failed to provide a comprehensive evaluation of Temu's interface, specifically its recommender systems and the *Temu Affiliate & Influencer Programme*.

The Commission also found that Temu had not deployed reasonable or effective mitigation measures, especially concerning the performance of its content-moderation systems, the functioning of its recommender algorithms, and the interface features that may contribute to consumer harm. Specifically, the platform was suspected of infringing Articles 27 and 38 of the DSA by not providing clear explanations of the main parameters governing

⁵¹ Liv McMahon, Zoe Kleinman, 'Instagram y Facebook eliminan a los verificadores de información como hizo X tras ser comprada por Elon Musk?' (BBC News 7 January 2025). Available at: <https://www.bbc.com/mundo/articles/clvjlp66q2po> [Accessed 16 September 2025].

⁵² European Commission, 'Commission opens formal proceedings against Meta (Instagram) under the Digital Services Act' (Press release 30 April 2024). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2389 [Accessed 16 September 2025].

⁵³ European Commission, 'Commission decision initiating proceedings pursuant to Article 66(1) of Regulation (EU) 2022/2065' (31 October 2024). Available at: <https://ec.europa.eu/newsroom/dae/redirection/document/110873> [Accessed 18 September 2025].

its recommender systems and by failing to offer easily accessible, system-specific options allowing users to opt out of profiling.

Finally, the Commission suspected a violation of Article 40(12) of the DSA due to restrictive conditions imposed on qualified researchers, including prohibitions in the Terms of Service, insufficient information on accessible data, and technical constraints in the research access portal.

2.6. Protection of minors from online pornography

Based on the principle enshrined in Article 28 of the DSA regarding the online protection of minors⁵⁴, the European Commission initiated in 2024 inquiries into the platforms Pornhub, Stripchat, XNXX, and XVideos⁵⁵, primarily addressing concerns regarding the protection of minors.

In its preliminary assessment, the Commission concluded⁵⁶ that the platforms had not introduced safeguards that are both adequate and proportionate to ensure a high level of privacy, safety, and security for children. In particular, the lack of reliable age-verification systems was identified as a major shortcoming in preventing minors' exposure to adult content. Furthermore, the Commission found deficiencies in the platforms' ability to conduct thorough risk assessments and to implement mitigation strategies aimed at addressing potential adverse effects on the rights of the child, as well as on the mental and physical well-being of users. The absence of such measures, especially those capable of restricting access by minors to inappropriate material, was deemed incompatible with the expected standard of diligence.

These cases foreground the DSA's fundamental rights balancing act. On the one hand, Article 11 of the European Charter of Fundamental Rights protects freedom of expression, which includes access to lawful adult content. On the other, Articles 7 and 24 of the European Charter of Fundamental Rights enshrine the protection of children, privacy, and human dignity. Enforcement thus requires proportional measures that target illegal and harmful content without unjustifiably restricting lawful expression. Doctrinally, these proceedings reveal how the DSA is shifting the EU's role from a neutral conduit liability regime to a proactive governance model, where platforms must prove that they have taken reasonable, proportionate steps to mitigate foreseeable risks.

The Commission's approach is consistent with the foundational principles of the DSA⁵⁷, which places particular emphasis on user safety, the protection of fundamental rights, and the proportionality of regulatory obligations. By identifying the absence of reliable age-verification systems as a systemic risk, the measure reflects the DSA's requirement for VLOPS to adopt risk-based due diligence and to mitigate foreseeable harms underlining the need for innovation in age-verification technologies that are both effective and proportionate. At the same time, the measure raises practical and ethical challenges. Effective age verification must balance the legitimate objective of shielding minors from harmful content with the principles of privacy and data minimization enshrined in the DSA. Overly intrusive verification mechanisms could undermine users' rights to privacy, while insufficient safeguards would fail to uphold the duty of care towards vulnerable groups.

⁵⁴ "Providers of online platforms accessible to minors shall put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service".

⁵⁵ The correspondent establishments are: i) Aylo Freesites Ltd. (Pornhub) and Technius Ltd. (Stripchat) both located in Cyprus; and NKL Associates s.r.o (XNXX) and WebGroup Czech Republic (XVideos) in Czequia.

⁵⁶ European Commision, 'Commission opens investigations to safeguard minors from pornographic content under the Digital Services Act' (Press release 27 May 2025). Available at: <https://digital-strategy.ec.europa.eu/en/news/commission-opens-investigations-safeguard-minors-pornographic-content-under-digital-services-act> [Accessed 16 September 2025].

⁵⁷ In order to ensure a safe online experience for minors, on 10 October 2025 the European Commission approved Communication - Guidelines on measures to ensure a high level of privacy, safety and security for minors online, pursuant to Article 28(4) of Regulation (EU) 2022/2065, setting out measures to protect children and young people to face online risks that arose from their activity on platforms. The draft is available at: <https://ec.europa.eu/newsroom/dae/redirection/document/118226> [Accessed 20 September 2025].

3. Objective dimension of non-compliance: repeated violations of the DSA in infringement procedures

A review of the various provisions invoked by the European Commission in its supervision of VLOPs and VLOSEs reveals the existence of areas that are repeatedly violated in the application of the DSA. The assessment of these areas is of interest insofar as this acknowledgement can serve to analyse the hypothesis of this study (identify if the infringement can be explained on the flexibility of the DSA or the attitude of the recipient) and suggest alternatives to improve implementation tools. This study will highlight three aspects identified by the Commission in the abovementioned procedures that directly affect the implementation of the DSA: i) the evaluation and correction of systemic risks, ii) empowerment of users (failures in user guarantees regarding the dissemination, detection and deletion of illegal content and internal complaint-handling system); iii) breaches of transparency requirements and information asymmetries.

3.1. Evaluation of systemic risks and subsequent adoption of preventive or corrective measures (Articles 34 and 35 of the DSA)

The various procedures examined have identified insufficient compliance by platforms in the analysis of systemic risks arising from moderation systems, illegal content detection systems and algorithmic content recommendation systems, among others, which can sometimes lead to addiction and subsequent mental health problems or affect civil discourse⁵⁸. In this regard, it should be noted that beyond the provisions of Articles 34 and 35 of the DSA, the flexibility of the regulation does not favour uniform implementation. This partially explains, for instance, the extraordinary limitations of Temu's risk assessment report. In light of this, the European Commission has decided to publish a Q&A on Transparency reporting obligations on risk assessments reports⁵⁹ and specific guidelines on elections⁶⁰ or minors⁶¹ and to use follow-up reports on the activity of VLOPs and VLOSEs pursuant Article 35(2) of the DSA. The first follow-up report, covering the period between 17 February 2024 and 16 February 2025, was published by the EBDS and the European Commission on 18 November 2025⁶². This document focuses in particular on the four categories in Article 34: the dissemination of illegal content, impacts on fundamental rights, threats to civic debate and electoral processes, and risks to health, minors and physical and mental well-being. While the report does not formally assess the degree of compliance of each platform and expressly states that it cannot be interpreted as a compliance audit⁶³, it serves as a benchmark, by identifying patterns, shortcomings and good practices that are essential for assessing the correct implementation of the regulation.

⁵⁸ This is the case of Meta's deprecation of CrowdTangle.

⁵⁹ European Commission, 'Q&A on risk assessment reports, audit reports and audit implementation reports under DSA' (updated 27 November 2024). Available at: <https://digital-strategy.ec.europa.eu/en/faqs/qa-risk-assessment-reports-audit-reports-and-audit-implementation-reports-under-dsa> [accessed 25 November 2025].

⁶⁰ European Commission. Communication from the European Commission – *Guidelines for providers of Very Large Online Platforms and Very Large Online Search Engines on the mitigation of systemic risks for electoral processes pursuant to Article 35(3) of Regulation (EU) 2022/2065 (C/2024/2537)*, adopted on 26 April 2024. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52024XC03014&qid=1714466886277> [Accessed 11 November 2025].

⁶¹ European Commission. Communication from the European Commission – *Guidelines on measures to ensure a high level of privacy, safety and security for minors online, pursuant to Article 28(4) of Regulation (EU) 2022/2065 (C/2025/5519)*, adopted on 10 October 2025. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C_202505519 [Accessed 11 November 2025].

⁶² EBDS, 'First report of the European Board for Digital Services in cooperation with the Commission pursuant to Article 35(2) DSA on the most prominent and recurrent systemic risks as well as mitigation measures' (18 November 2025). Available at <https://ec.europa.eu/newsroom/dae/redirection/document/121707> [Accessed 26 November 2025].

⁶³ Ibidem, p.3: "Nothing in this report should be interpreted as guidance for the compliance with Articles 34 or 35 DSA. Nothing in this report should be interpreted as constituting an assessment or evaluation of compliance by designated VLOPs and VLOSEs with Articles 34 or 35 DSA or any other provision of the DSA".

The report does not merely list risks, but also provides an initial mapping of the responses⁶⁴ of VLOPs/VLOSEs, based on their self-reports, audits, and mandatory transparency, supplemented by independent studies and contributions from civil society. This first report is based primarily on initial information from platforms and available research and is therefore a “baseline” that will be refined with richer data and future follow-up reports. However, given their nature, these reports will enable analysis of the progress made in implementing the standard and may provide clues about methodologies and evolving best practices to mitigate systemic risks⁶⁵. However, in view of its content, complementary tools such as independent audits (as AliExpress commitments prove) and the opinions and suggestions of users, researchers and trusted flaggers⁶⁶ could be of interest for promoting compliance. In other words, the flexibility of the standard requires the cooperation not only of the public authorities, but also of civil society. Co-regulation is redefined in terms of citizen participation, which also entails a genuine need for training for platform users.

3.2. Non-compliance with the obligation to establish mechanisms for notification and action regarding illegal content and internal complaint-handling system (Articles 16 and 20 of the DSA)

The Commission investigates non-compliance with Article 16, which requires the establishment of mechanisms for reporting illegal content, the monitoring of these procedures with the necessary information provided to individuals and, where appropriate, the use of automated means of processing these systems. Related to this, breaches of the duty to provide an internal complaint-handling system pursuant Article 20 of the DSA have been identified in the proceedings currently underway.

In my opinion, the establishment of notification mechanisms and intern complaint-handling systems is contingent on the willingness of the platforms in question. The interaction between accountability and institutional supervision is intended to promote compliance, whether proactively or reactively, following the imposition of sanctions. And it seems to be working⁶⁷.

Ensuring compliance through the use of automated means is more complex. This automated systems must address not only technical difficulties but also changing legal frameworks. In this regard, it has been proposed to incorporate computational legal reasoning into automated supervision systems, which have the capacity to interpret regulatory changes and automatically translate them into operational verification rules⁶⁸. There is no doubt that this could be useful in preventing failures in the detection of illegal content and would result in greater traceability. And consequently, platforms and civil society organisations have reported the use of these systems⁶⁹. However, caution should be exercised in this regard, as the risks involved could be excessive. The use of these systems could create a false sense of compliance by automation. Automated systems fail, at least in the current state of the art. Therefore, it would be necessary, where appropriate, to comply with legally

⁶⁴ Notable measures include: 1) design and policy adjustments for child protection and mental health (changes to recommendation algorithms, limits on certain features for minors, parental controls, and improvements to the presentation of warnings and time control tools); 2) Specific measures to address the risks of generative AI (labelling or flagging of synthetic content, quality and relevance checks, abuse detection systems) and intellectual property infringements in online marketplaces (better notification and removal systems, filters, and enhanced cooperation with rights holders); 3) Strengthening automated and human systems for detecting illegal or harmful content, including more sophisticated techniques (e.g., automatic detection of emojis used as code for drug sales or other illegal activities).

⁶⁵ EBDS, ‘First report...’, pp. 1-2.

⁶⁶ For instance, in the decision initiating proceedings againsts Temu (footnote 20), the European Comision refers to “multiple available reports indicating that illegal products are widely available on and disseminated through Temu’s online interface”. Therefore, the Commission bases its decision to initiate proceedings against the platform on the content of these reports.

⁶⁷ European Commission, ‘Commission makes AliExpress’ commitments under the Digital Services Act binding’ (Press release 18 July 2025). Available at: <https://digital-strategy.ec.europa.eu/en/news/commission-makes-aliexpress-commitments-under-digital-services-act-binding> [Accessed 27 November 2025].

⁶⁸ Hongbo Wng; Jiang Wu; Chunhe Ni; Kun Qian, ‘Automated Compliance Monitoring: A machine learning approach for digital service in Adherence in Multi-Product Platforms’ [2025] *Proceedings of the 3rd International Conference on Mechatronics and Smart Systems*, p. 23, DOI: 10.54254/2755-2721/147/2025.22189

⁶⁹ EBDS, ‘First report...’, p. 34.

required fundamental rights impact assessments and to ensure that no regulatory or geopolitical biases are incurred. It should be noted that the transnational nature of the services provided by VLOPs and VLOSEs makes it difficult to adopt standards. In fact, the national standard plays here, in accordance with Article 3.h) of the DSA. And an ultimate risk could lie in the possibility of under-enforcement or, conversely, overblocking of legal obligations. When in doubt, the system could choose to prioritise the most restrictive legal obligation, affecting freedom of expression. Perhaps the reasonable approach would be to combine adequate investment in these means of detection with human moderators familiar with local and cultural features (including language)⁷⁰ and control with civil collaboration through trusted flaggers, researchers and fact-checkers⁷¹. All of this would be without prejudice to recourse to the jurisdiction of each State.

3.3. Breaches of transparency requirements and correlative information asymmetries

In the various proceedings initiated, the Commission has also identified breaches of effective compliance with transparency requirements. Specifically, failure to comply with the contractual transparency obligations under Article 14 of the DSA may constitute a violation of consumer rights. This obligation is linked to the guarantee in Article 27 of the DSA, which requires platforms to provide users with a feature to manage their preferences on recommendation systems. This aspect is also being investigated for possible non-compliance or defective compliance (few options for opting out in AliExpress and Temu cases, for instance). Meanwhile, in terms of transparency regarding online advertising (TikTok case), breaches have been identified in particular in the duty to maintain an accessible and navigable repository in accordance with Article 39 of the DSA. On these issues, the text of the DSA is quite exhaustive in detailing the information that must be provided and it is also enriched with the Guidelines approved by the European Commission, the Code of Conduct on Disinformation⁷² and the Code on countering illegal hate speech online⁷³. Therefore, regulatory compliance requires greater adherence by platforms, which can be promoted through the collaboration of users, trusted flaggers under Article 22 of the DSA, and civil society.

In any case, the system's reliance on platforms' self-declarations for transparency, combined with the significant discretion allowed by the database scheme, results in transparency that may be insufficient in practice⁷⁴. Information and power asymmetries between regulators and platforms create an environment in which large platforms can effectively shape their compliance to make themselves appear compliant without providing meaningful transparency. This can affect the cooperation of fact-checkers and civil society in general. Therefore, effective enforcement hinges on the Commission's ability to obtain meaningful access to platform data and documentation. Articles 51–67 of the DSA grant investigatory powers, yet platforms may invoke trade secrets, data protection obligations, or jurisdictional disputes to resist disclosure. Consequently, without robust data access mechanisms and technical expertise, enforcement risks becoming performative.

However, the Commission has not the required expertise and capabilities to perform the supervisory role assigned by the DSA. To support the Commission in this matter, the Centre for Algorithm Transparency was established. Additionally, Article 40 (4) and (12) of the DSA engages independent researchers in the assessment of the implementation of measures adopted under Article 35. This provision, a novelty in the European legal

⁷⁰ Ibidem.

⁷¹ Research has demonstrated that the lack of harmonised methodologies does not result in substantially divergent outcomes. This suggests that analysis are well conducted and that potential human biases have minimal influence on the non-automated moderation of illegal content. Vid. Sian Lee, Aiping Xiong, Haeseung Seo, Dongwon Lee, ‘“Fact-checking” fact checkers: A data-driven approach’ [2023] 4(5) *Harvard Kennedy School Misinformation Review*.

⁷² Available at: <https://ec.europa.eu/newsroom/dae/redirection/document/112678> [Accessed 27 November 2025].

⁷³ European Commission and Platforms. «Code of Conduct on illegal hate speech online+». Revision 2025. Available at: <https://digital-strategy.ec.europa.eu/en/library/code-conduct-countering-illegal-hate-speech-online> [Accessed 27 November 2025].

⁷⁴ Rishabh Kaushal; Jacob Van de Kerkhof, Catalina Goanta, Gerasimos Spanakis and Adriana Iamnitchi, ‘Automated Transparency: A Legal and Empirical Analysis of the Digital Services Act Transparency Database’ [2024] *ACM*, 18 pages. Available at: <https://arxiv.org/pdf/2404.02894v1> [Accessed 8 September 2025].

system⁷⁵, poses a cross-cutting issue in multiple proceedings: the resistance of platforms to provide access to data for academic researchers⁷⁶. This affects the capacity for independent research on systematic risks, which is essential for promoting public scrutiny into the potential impact of platforms on our physical and mental health⁷⁷. The concept of systematic resistance, manifested through various techniques, has been discussed. These techniques encompass the restrictive interpretation of legal concepts, such as systemic risk or making excessive demands in both quantitative and qualitative terms that exceed the strictly legal requirements. Finally, as documented in the case Grupo Ciberimaginario with X⁷⁸, a more rudimentary yet effective technique is deployed: the utilisation of delaying tactics, which involve the deliberate allowance of a protracted period to elapse between communications (i.e. deliberately allowing a long time to elapse between communications).

This asymmetry of information between platforms and external actors also affects the role of independent fact-checkers and content verifiers, that face significant structural limitations. As previously stated, platforms retain privileged access to algorithmic processes, datasets, and internal moderation mechanisms. This opacity restricts verifiers' ability to comprehensively assess the spread of disinformation⁷⁹, harmful content, or systemic risks. The absence of robust audit mechanisms means regulators and researchers cannot fully rely on platform-reported data to understand moderation behaviour and evaluate effectiveness. This verification gap undermines the accountability objectives that content moderation requirements are designed to achieve. Various measures can be suggested to prevent this asymmetry. For example, minimum interoperability requirements (through the establishment of standardized APIs); the adoption of supervised access protocols; enhanced transparency measures (annual reports on approved and rejected access requests, reasons for denial, response times, and volumes of accessible data); or the establishment of a rapid appeal procedure for denials, among others.

In addition, the implementation of the DSA confronts practical challenges related to scale and enforcement. The sheer volume of digital content, combined with linguistic and cultural diversity across the European Union, limits the capacity of verifiers to provide timely and consistent evaluations. While the DSA envisages enhanced cooperation and transparency obligations, the reliance on platforms' internal compliance reports reduces the verifiers' potential impact. Consequently, the contribution of fact-checking and content verification initiatives, although valuable, remains supplementary rather than decisive in ensuring the systemic accountability that the DSA aspires to achieve.

IV. Conclusion

The early enforcement of the DSA is indicative of both the ambition and the complexity of the European Union's regulatory approach to digital platforms. Although the DSA approval process took into account all the interests involved, it is undeniable that platforms and search engines have not fully welcomed a regulation that subjects them to obligations with very significant organisational, legal and economic implications. The institutional architecture proposed by the DSA and the complexity arising from the transnational dimension of digital services pose additional difficulties for the implementation of the regulation.

⁷⁵ Anna Liesenfeld, 'The legal significance of Independent research based on Article 40 DSA for the Management of Systemic Risks in the Digital Services Act' [2025] 16 (special issue 1 on Charting the Landscape of Automation of Regulatory Decision-Making) *European Journal of Risk Regulation*, p. 189. <https://doi.org/10.1017/err.2024.61> [Accessed 23 November 2025].

⁷⁶ Even requiring them to pay disproportionately high fees (see, proceedings against X).

⁷⁷ European Commission, 'Commission preliminarily finds TikTok and Meta in breach of their transparency obligations under the Digital Services Act' (Press release 24 October 2025). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2503 [Accessed 18 November 2025].

⁷⁸ Manuel Gértrudix Barrio, 'Cuando X (Twitter) dice NO: Crónica de una resistencia sistemática a la transparencia' (Blog entry 20 June 2025). Available at: <https://ciberimaginario.es/2025/06/20/cuando-x-twitter-dice-no-cronica-de-una-resistencia-sistemica-a-la-transparencia/> [Accessed 18 September 2025].

⁷⁹ Baybars Örsek, 'Structural problems with tech platforms prevent fact-checkers from focusing on harm and virality' (Poynter, 24 June 2024). Available at: <https://www.poynter.org/commentary/2024/structural-problems-with-tech-platforms-prevent-fact-checkers-from-focusing-on-harm-and-virality/> [Accessed 14 November 2025].

The study's working hypothesis was that the European legislator's decision to prioritise autonomy and flexibility at institutional, material and procedural levels shapes the implementation of the regulation. The research has confirmed the validity of this hypothesis. It is important to note that significant constraints have already been identified in the early stages of implementation. At the institutional level, non-compliance and delays in the designation of DSCs, the diversity of their resources and material status of independence, as well as the uncertainty arising from the need for coordination with agencies and other sectoral regulatory bodies, condition the implementation of the DSA and may cause friction. In order to address these circumstances, greater prominence could perhaps be given to the EBDS and cooperation procedures could be formalised to provide legal and institutional certainty for enforcement.

In the material sphere, the regulation's deliberate vagueness regarding accountability duties and systemic risk assessment methodologies encourages partial non-compliance. This material flexibility is not prejudicial *per se*. In the event of contingencies, it is reasonable for the DSA to allow for adaptation to future requirements. However, the study suggests that soft law instruments, such as good practice guidelines or codes of conduct, should be strengthened so that they can respond to the uncertainties generated in the regulation itself. This has already been implemented in areas of essential interest, such as the protection of minors during electoral processes.

It is highly probable that, with time, the experience gained will facilitate improvements in regulatory compliance. However, the potential for institutional fragmentation resulting from stratified supervision could be mitigated by fostering enhanced private collaboration. It is important to acknowledge the limitations of audits by qualified investigators under Article 40 or trusted flaggers. However, these audits can complement coordination shortcomings. For these purposes, protocols, methodologies or checklists can be suggested to assess the compliance of platforms and search engines with their obligations. These contributions may also take into account the heterogeneity of the different Member States in which the DSA applies, particularly the cultural and linguistic differences that may compromise automated monitoring. In order to facilitate this process, it is essential to ensure that these third parties gain access to the necessary information. This issue is currently under discussion in the context of transparency, as the platforms in question are restricting free access to the data necessary for civil collaboration. The study suggests different measures to promote access to data, such as the adoption of supervised access protocols or the establishment of a rapid appeal procedure for denials.

The truth is that, despite their initial reluctance, platforms and digital service providers have made considerable efforts to comply with the DSA. In this regard, measures that respect the principles of autonomy and subsidiarity and that promote greater security for platforms, digital service providers and end users — whose rights and protection are central to this regulation — should be welcomed. This would involve establishing multi-level cooperation mechanisms to create a global reference framework that ensures compliance with the regulation.

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