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EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

“Key elements of the EDPS concept note ‘Towards a Digital Clearinghouse 2.0’”

Towards a Digital Clearinghouse 2.0

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Good morning to all our distinguished speakers and guests. It is my immense pleasure to welcome you to this day of intense discussions about the future of cross-regulatory cooperation.

At a time where regulatory simplification is at the centre of policy debates in Brussels and beyond, it is more important than ever to ensure that EU laws remain coherent with one another. It is also essential to ensure that these laws are interpreted and applied in a consistent manner.

At the EDPS, we believe that the best way is to make the regulators responsible for enforcing those laws talk to each other.

Of course, it is easy to just say “*we need to cooperate more*”.

It is harder to develop a strategic vision on how to foster cooperation in a manner that is efficient, coherent and delivers concrete benefits for individuals, companies and regulators.

That is why I am very grateful to each and every one of the experts who have agreed to speak at this event to help us reflect, openly and collectively, about what the future should look like.

The advent of the EU Digital Rulebook

The EDPS has long advocated for the cooperation between regulators from different fields of EU ‘digital’ landscape, starting already in 2014 . Some of you may even recall our first ‘Digital Clearinghouse’ initiative, which was conceived almost 10 years ago.

My predecessor, Giovanni Buttarelli, was clearly a visionary when he pointed to the need for “*something more*” to ensure effective enforcement in the EU digital sector, with a particular focus on the need for greater cooperation among the authorities tasked with enforcing laws in the areas of competition, consumer protection and data protection.

Since that time, a lot has happened.

We saw several important initiatives emerge at national level to foster cooperation among administrative authorities that supervise different aspects of the digital economy. We can learn a lot from these experiences, and that is one of the main reasons why we are gathered here today.

We also witnessed an explosion of new EU legislation often referred to as the ‘EU’s new Digital Rulebook’. Laws like the Digital Markets Act, the Digital Services Act, the Data Governance Act, the Data Act and the Artificial Intelligence Act illustrate the importance of personal data processing in today’s economy, and that it is more necessary than ever to protect individuals and their fundamental rights.

The advent of the EU Digital Rulebook means not only that there are several new regulatory intersections that need to be navigated, but also that there are quite a few “new sheriffs” in town.

Against this background, the need for practical ways to ensure coherent and consistent application of EU law is paramount.

Our experiences in navigating the EU’s new digital rulebook are also growing.



In addition to the implementation of these laws at national level, we see more initiatives towards greater cooperation and coordination at EU level. The EDPB's guidance on the interplay between the Digital Services Act the GDPR was a very positive first step. And the Joint Guidelines with the Commission on the interplay between the Digital Markets and GDPR are a milestone: the first time that EU data protection authorities and the Commission issue guidance together, whilst each acting within their own sphere of competence.

The EDPB's recent Helsinki Statement also stresses the need to foster structured cooperation across regulatory silos and to address legal and practical challenges to cross-regulatory cooperation on concrete cases.

Last year the EDPS issued a concept note outlining what we believe is still missing today to make that happen.

What is missing for effective cross-regulatory cooperation

While much progress has been made and can continue to be made under the current legal framework, there are still significant limitations.

This is especially true if we think about how competent authorities can cooperate across different legal fields and frameworks.

When we look at the current Rulebook, most exchanges between competent authorities are foreseen to take place 'act per act', without a central coordination mechanism that would bridge the different acts.

The cross regulatory platform - close to what we would expect - is offered today by the High-Level Group of the Digital Markets Act, but this forum remains - as its name suggests - focused first and foremost on the DMA.

While it is natural to have a 'centre of gravity', I remain convinced of the need to design a more horizontal forum for cross-regulatory cooperation.

The Digital Clearinghouse 2.0

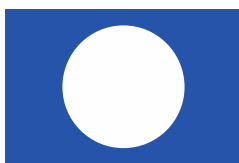
A Digital Clearinghouse 2.0 would provide authorities and bodies competent to enforce EU laws in the digital economy (and their respective 'boards') with a platform to exchange and coordinate on issues of common interest, to align at the level of policies and legal interpretations.

The Digital Clearinghouse 2.0 would also be a forum where participating authorities can share information about ongoing enforcement actions to facilitate further (bilateral or multilateral) engagement with other authorities on those concrete cases where relevant.

Please don't get me wrong: I'm not suggesting that all competent authorities, at both national and EU level, should get together every month to discuss all their ongoing cases and activities.

To be effective, a forum such as the Digital Clearinghouse 2.0 should have certain characteristics:

- First, the membership of this forum should include representatives from existing structures for cross-regulatory cooperation at EU Member State level, as well as EU-



level structures such as the European Data Innovation Board and the DMA High Level Group.

- Second, given the high number of potential participants, this forum should work in 'variable geometry'. This means that participants would be free to cooperate and coordinate only on issues that are important for them and where they have or need relevant expertise.
- Third, it should have a central body providing a permanent secretariat to support and maintain the network, as well as to serve as technical platform enabling the efficient and secure exchange of information.
- Fourth, it should allow all participants to contribute on an equal footing, with no single entity unilaterally imposing the agenda.
- Fifth, it should remain sufficiently transparent and open. This could be achieved in several ways, from publishing activity reports to organising stakeholder events and consultations.

But would it be enough?

Let me be clear: a Digital Clearinghouse 2.0 will not, by itself, be enough to ensure effective cross-regulatory cooperation.

This is because competent authorities are often missing an adequate legal basis allowing them to exchange information that might be relevant for enforcement in their respective areas of competence.

This gap is particularly serious when authorities from different fields are engaged in parallel enforcement activities into the same conduct of the same entities. This gives rise to related (and sometimes even identical) questions of legal interpretation.

That is why we have encouraged the Commission to consider introducing a legislative proposal that would allow competent authorities under the various parts of the EU Digital Rulebook to cooperate effectively, both with each other and with other relevant authorities at national and EU level.

In the longer term, the EDPS considers that further legislative interventions may be needed to more systematically address potential issues of inconsistency and tensions arising from the application of different parts of the EU Digital Rulebook.

It can start with clarifications on how certain provisions should be applied together. But a legal intervention could also streamline the number of regulators in charge of overseeing closely related frameworks and formally create an independent central body to promote coherence in their practical application.

Today, we want to hear from you and your experiences in cross-regulatory cooperation. We want to hear about your successes, but also about the challenges encountered. We also want to hear your ideas about what is needed to overcome these challenges; about what might work, and what likely is impracticable.



I hope this day leads us to explore and identify very concrete steps forward, well beyond expressing good intentions.

Thank you for your attention and I look forward to learning from you.

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