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Centre on Regulation in Europe

IMPROVING EU INSTITUTIONAL DESIGN TO BETTER SUPERVISE DIGITAL PLATFORMS

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ASK QUESTIONS VIA SLI.DO,
USING THE HASHTAG [#CERREDIGITAL](#)

QUESTIONS

Given ever-increasing digital platform regulation:

- 1 How can **effective enforcement** be ensured
 - How can national regulators be strengthened?
 - How can cooperation among national regulators improve enforcement?
- 2 Is **cooperation** among authorities involved in different spheres (e.g., data protection and competition law) desirable and how can this be facilitated?
- 3 Is there a case for **centralised enforcement** at EU level for the biggest digital platforms regarding certain activities?

EU LAW STRENGTHENING NATIONAL REGULATORS

EU Law has incrementally boosted the **power/independence** of national regulators

- Legislation & case-law

However

- **Uneven requirements** on independence, resources, & powers
- Challenge with **cybersecurity**: ensuring that regulatory choices are consistent with good governance principles

Recommendation: A **template setting out criteria** for independence, powers, & resources for all regulators.

- Avoids uneven prescriptions; forces legislator to explain why an NCA should have more or less powers than the norm.

THREE INSTITUTIONAL MODELS OF ENFORCEMENT

1. Country of origin

- One regulator acts for the benefit of all Member States

2. Country of destination

- All regulators are competent when conduct affects their jurisdiction

3. Centralised

- European Commission safeguards the interests of the EU

THREE INSTITUTIONAL MODELS OF ENFORCEMENT

1. Country of origin

- One regulator acts for the benefit of all Member States
- **Advantage:** one-stop shopping, facilitates market integration
- **Risk:** forum shopping; under-enforcement → other regulators use other rules to address this (e.g., CNIL Google Cookies)
- **Assumption:** power/resources to apply EU Law; incentive to take into account the interests of the EU as a whole



THREE INSTITUTIONAL MODELS OF ENFORCEMENT

2. Countries of destination

- All regulators are competent when conduct affects their jurisdiction
- **Advantage:** regulation suited to country-specific issues
- **Risk:** different regulatory cultures/interpretation of the rules
- **Assumptions:** EU Law secures convergent approach to regulation

THREE INSTITUTIONAL MODELS OF ENFORCEMENT

3. Centralised

- European Commission (EC) safeguards EU interests
- **Advantage:** EC can see the interests of the EU as a whole better than an NCA, facilitates market integration
- **Risk:** perceived lack of independence; limited resources; limited understanding of local context
- **Assumptions:** EU-wide effects of conduct; cooperation w/ NCAs present

THE ROLE OF CROSS-COUNTRY NETWORKS

Cross-country coordination among regulators

- Development of best practices & alignment of standards
- Assistance in enforcement (country of origin)
- Coordination of enforcement (country of destination)
 - Notable success: Consumer Protection Cooperation Network (CPC Network)

Recommendations to strengthen cross-country cooperation

- Embed networks in the legal framework
- National authorities expected to exchange information and devise best practices via soft law
- Assistance in enforcement – model to stimulate others to act:
 - Request for enforcement for country of origin (DSA model)
 - Duplicate CPC Network for country of destination

CROSS-REGIME COOPERATION

Merits to joined-up regulation

- Coherence among regulatory objectives: competition, consumer protection, privacy, cybersecurity
- Challenges: developing understanding among regulators

Models

- UK's Digital Regulation Cooperation Forum (competition, data protection, financial services regulation, electronic communications):
 - Share information and knowledge to shape policy
 - Dialogue when one NCA enforces its rules
- High-level DMA Group (EP proposal):
 - Recognises possible role of regulators beyond competition authorities

CENTRALISED ENFORCEMENT

DMA + DSA centralise enforcement for large players


Challenges:

- Resources
- How to best embed these rules at the EC (joint DG teams)?
- Information sharing between DSA/DMA
- Support from national regulators:
 - Points of contact for complaints
 - Assistance in investigation

CENTRALISED ENFORCEMENT

Long term options

1. A European Platform Authority
2. Incremental centralisation of other platform regulation
 - Banking supervision as a model
 - From decentralisation to centralisation for systemically significant banks
 - Crisis as a window of opportunity for radical reform
 - Role of joint supervisory teams
 - Impact: more demanding supervision achieved & level playing field
 - Case-by-case cost-benefit assessment of centralisation
 - Importance of joint enforcement with NCAs
 - Support EU body ← → delegate some enforcement powers to NCAs



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