



54th EPRA meeting (online)

Plenary theme:

Cross-sectoral cooperation between regulators

14 October 2021

**Background paper¹ by Beth McNulty (Ofcom, UK) & the EPRA Secretariat
(Post-meeting version 26/11/2021)**

1. EPRA and Cooperation

In 1995, the creation of EPRA was a response to the need for increased cooperation between European audiovisual regulatory authorities. More than 25 years later, the digital environment has prompted policy makers and regulatory authorities to review the frontiers of cooperative schemes, to take into account not only the cross-border challenges but also the cross-sectoral ones.

The issue of cross-sectoral cooperation was first addressed by EPRA in 2007 at a [co-event](#) organised by EPRA and the Independent (telecommunications) Regulators Group², with the aim to discuss the challenges raised by convergent industry models and the impact on traditionally distinct regulatory areas. While the discussion at the time revolved around the question of structural cooperation and convergent regulators, it gradually became clear over the years that the globalised media environment and the forthcoming European policy frameworks would require more substantial and developed collaboration and coordination. As an illustration of this growing awareness, a [joint webinar with the IRG](#) on 9 July 2021 explored the benefits of regulatory cooperation to address emerging digital challenges³. Through the presentation of concrete examples in a range of countries at different stages of regulatory cooperation, it sought to analyse existing strategies and identify best practice, difficulties and key requirements to establish efficient and structured collaboration between national authorities for a future-proof regulation of the online sphere. The shared experiences illustrated some areas where reinforced collaboration can be particularly fruitful, such as joint research, access to and collection of data and the promotion of media/digital literacy.

In addition, since 2019, EPRA has been exploring the question of cross-sectoral collaboration from various angles. The [50th EPRA meeting](#) in Athens looked at the interplay between media authorities and data protection authorities with regard to the protection of minors in the Audiovisual Media Services Directive⁴. During the [52nd EPRA meeting](#), a “teach-in” session discussed how audiovisual and competition regulatory fields could potentially work together more closely in the digital era and inspire each other. More generally, the need for building strong partnerships with other regulators,

¹ **Disclaimer:** this document has been produced for an internal meeting by EPRA, an informal network of 55 regulatory authorities in the field of audiovisual media services. It is not a fully comprehensive overview of the issues, nor does it represent the views or the official position of EPRA or of any member within the EPRA network.

² Previously named ERG - European Regulators Group

³ IRG/EPRA joint webinar: Working together: Why does it matter? - Exploring the benefits of regulatory cooperation to address emerging digital challenges: <https://www.youtube.com/watch?v=NrXZD2dvKeg>

⁴ 50th EPRA meeting: "Protecting minors in the online world" - Background paper: <https://www.epra.org/attachments/athens-plenary-1-protection-of-minors-in-the-digital-world-what-common-challenges-for-nras-and-dpas-background-paper>

such as the electronic communications, competition and data protection authorities, to secure a coherent approach to overlapping areas was emphasised by several EPRA members at the plenary session of the 52nd EPRA meeting "[Great expectations: the changing paradigm of media regulators](#)"⁵ as part of a necessary mindset shift on the part of media regulators.

Reflecting on this topical issue, the EPRA Executive Board has identified the development of cross-sectoral relationships as one of the main challenges faced by media regulators, in the [EPRA Statement of Strategy](#)⁶. With the aim of providing support and resources to EPRA members in this regard, "cooperation with NRAs from adjacent regulatory sectors" was thus selected as a priority topic driving EPRA's work in 2021 (see EPRA [Work Programme 2021](#)).

This thematic plenary session aims to deep-dive both into institutional and substantial issues of regulatory collaboration between media, telecoms, competition, data protection and consumer authorities for an effective regulation of the online environment in the interest of citizens, consumers, and the industry. This paper aims to explore the importance of regulatory cooperation in the online sphere, the challenges in developing effective cooperation models, as well as different cross-sectoral cooperation and enforcement models at both national and European levels.

2. Emerging harms, policy interplays and the need for cross-sector regulatory cooperation

While the digital economy brings many benefits, the global and concentrated nature of online platforms poses risks for individuals and society, including new types of harms. These can include exposure to harmful content or conduct, loss of privacy, data and security breaches, lack of competition, unfair business practices and online fraud or harm to wellbeing⁷. Not only that, platforms can also play a significant role in wider societal discourse around elections and the smooth functioning of democratic processes⁸.

A consequence of these new harms is that previously separate policy areas have become increasingly linked, and these new harms mean different authorities are required to consider a wider set of issues from the perspective of potentially conflicting policy aims and objectives. One example of this intersection is between the policy aims of promoting and protecting competition in digital markets and safeguarding the personal data of the users on digital platforms. Traditionally, there has been a natural tension between the increased use of data to promote competition and innovation versus the need to keep personal data contained to protect an individual's privacy rights. However, as highlighted in a 2020 Digital Clearinghouse paper, these different regimes can lead to complementary analysis,

⁵ FR, IE and UK - Top tips paper: <https://www.epra.org/attachments/great-expectations-the-changing-paradigm-of-media-regulators-top-tips-on-embracing-change>

⁶ EPRA Strategy for 2021-2023 "Sharing knowledge to embrace change": <https://www.epra.org/articles/epra-statement-of-strategy>

⁷ Ofcom, "[Online market failures and harm: an economic perspective on the challenges and opportunities in regulating online services](#)" (October 2019)

⁸ The Sustainable Computing Lab, "[The 2021 German Federal Election on Social Media: An Analysis of Systemic Electoral Risks Created by Twitter and Facebook Based on the Proposed EU Digital Services Act](#)" (September 2021)

ways of working and design of remedies⁹. For example, a data protection authority might benefit from a better understanding of competition concepts of market power to determine whether the data processing by a powerful data controller strikes a fair balance with the interests of data subjects. A competition authority also needs to be aware of data protection rules in order to prevent any data sharing remedies creating data protection concerns. Earlier this year, the UK's competition authority (the CMA) and data protection authority (the ICO) published a [joint statement](#) highlighting the benefits of closer working and the synergies between the interests of data protection and competition. Similarly, data protection and consumer protection law could be used to offer complementary protection in contractual relationships.

As media and content consumption moves into the digital space, various forms of competition regulation are also increasingly being used to address both economic and social policy objectives, alone or in conjunction with new approaches to regulating online content and content-sharing platforms¹⁰. In the UK, for example, the UK's CMA noted in its recent market study on online advertising that *"concerns relating to online platforms funded by digital advertising can lead to wider social, political and cultural harm through the decline of authoritative and reliable news media, the resultant spread of 'fake news' and the decline of the local press which is often a significant force in sustaining communities"*¹¹. In France, meanwhile, it is the competition authority that has overseen negotiations between publishers and platforms in the context of applying requirements set out in the French law implementing the EU's Copyright Directive; and in Australia the Competition and Consumer Commission (ACCC) has developed a Code on remuneration negotiations between these same actors. And perhaps most importantly of all, the EU has brought together both content moderation and a review of platform liability provisions, and proposals to overhaul the competition framework for digital platforms in its Digital Strategy – which rests on the twin pillars of a Digital Services Act and a Digital Markets Act.

It is clear interventions in this space will need to be carefully designed to promote synergies and avoid undesirable consequences. Part of this will require effectively engaging with the new interplays between competition, data, content and consumer issues, and the scope of the challenges means delivering effective regulation no longer fits neatly into the remit of one regulator. For the effectiveness of rules and ultimately the benefit of consumers and citizens, it is key that the authorities in charge cooperate between each other in an effective manner. However, cooperation in itself is not always straightforward and can take many forms, ranging from developing increased coherence between cross-sector regimes to more practical forms of cooperation and engagement between different regulators, both domestic and international. **The EPRA session will predominately focus on cross-sectoral cooperation across different regimes. However, we also set out below some broader examples of practical cooperation and lessons learned.**

⁹ Digital Clearing House, "Interplay between EU competition law, consumer protection and data protection law: strengthening institutional cooperation to increase enforcement effectiveness of EU laws in the digital economy" – A summary is available [here](#) (December 2020)

¹⁰ EPRA background paper produced by K. Barbov, M. Donde, B. McNulty, "Teach-in on Competition Law and ex ante market intervention", (November 2020): <https://www.epra.org/attachments/ad-hoc-working-group-2-competition-background-paper>

¹¹ [Online platforms and digital advertising: Market study final report](#), CMA, July 2020

3. The importance of developing effective cooperation models

The debate around cooperation has been growing and it is recognised that more joined up approaches enable regulators to build skills and capabilities, respond strategically to industry and technological developments and carry out more effective enforcement action. The OECD, for example, has long been advocating the importance of international regulatory cooperation to deliver effective regulation in the age of digitalisation and in July 2021 published its [Best Practice Principles on International Regulatory Cooperation](#). Although the OECD recommendations predominantly focus on cross-border cooperation (as opposed to cross-sectoral, which we will use the session to explore), it has highlighted three examples of where effective cooperation has galvanised change - 1) limiting tax evasion thanks to close cooperation between tax authorities; 2) preserving the ozone layer thanks to a protocol between 46 countries; and, 3) eradicating smallpox through collective action led by the WHO. Furthermore, it is important for us to consider the consequences of failing to effectively consider broader international aspects when thinking about developing cooperation models. As highlighted by Wagner and Ferro in a 2020 paper, the multi-stakeholder internet governance model, IGF, has so far been unable to produce any actual governance due to a failure to effectively include representative actors from different countries and sectors, and develop shared decision-making powers among experts¹². This in turn has prevented other institutions from emerging to contest existing governance practices and question these organisations' important status in this area.

A failure to effectively cooperate can not only lead to an inability to develop effective governance but can also lead to an inability to **effectively enforce** against the rules. This might stem from different interpretations of regulations; conflicting policy aims or a conflict in remedies. As highlighted by the Digital Clearinghouse, the shared regulatory digital space, in which different areas of regulation can be applied in parallel and by different authorities with sometimes conflicting policy aims, creates practical challenges around enforcement¹³. Enforcing the rules is a difficult task as the asymmetry of information between authorities and online platforms is very large, markets change quickly, and innovation is rapid and often unpredictable. Enhanced cooperation can help to overcome these challenges to a certain extent, and below we explore different models of national and European cooperation in further detail.

4. Different cross-sectoral cooperation and enforcement models at national and European level

National approaches

At a domestic level, regulators with competencies in the digital space are increasingly recognising the importance of cooperating on areas of mutual importance. Historically, this cooperation has, more often than not, occurred on an ad-hoc, informal basis and been subject to influence from wider policy and external pressures. In recent years, however, we have seen a move towards more formalised

¹² Dr Ben Wagner and Dr Carolina Ferro, "[Governance of Digitalisation in Europe](#): A contribution to the exploration sharing digital policy – towards a fair digital society?" (May 2020)

¹³ Digital Clearing House, "Interplay between EU competition law, consumer protection and data protection law: strengthening institutional cooperation to increase enforcement effectiveness of EU laws in the digital economy" (December 2020) – See above.

cooperation structures between cross-sectoral regulators in the digital space - notably in the UK with the Digital Regulators Cooperation Forum (DRCF) and in France, with the launch of Le Pôle numérique, jointly founded by Arcep, the agency in charge of regulating telecommunications in France, and the CSA. In Italy, Agcom's focus has been on a network of relations with other NRAs.

The DRCF: Against a backdrop of various developments in the regulation of online services in the UK, in July 2020, the CMA, the ICO and Ofcom formed the DRCF. The Financial Conduct Authority (FCA) joined the DRCF as a full member in April 2021 (having previously been an observer member).

The DRCF, which is a non-statutory body, aims to support cooperation and coordination between the four authorities on online regulatory matters, and enable coherent, informed and responsive regulation of the UK digital economy. The DRCF has six objectives:

1. Collaborate to advance a coherent regulatory approach
2. Inform regulatory policy making
3. Enhance regulatory capabilities
4. Anticipate future developments
5. Promote innovate
6. Strengthen international engagement

In March 2021, the DRCF published its first [plan of work](#), setting out a roadmap for how it will greatly increase the scope and scale of cooperation between the digital authorities. This involves pooling expertise and resources, working more closely together on online regulatory matters of mutual importance, and reporting on results annually.

Le Pôle numérique: Launched in March 2020 by Arcep and the CSA, Le Pôle numérique aims to help the two institutions to better fulfil their regulatory duties by providing deep dive technical and economic analyses of the digital market field related to CSA and Arcep regulation. The forum operates a flexible and reactive structure, with a rotating chairmanship. The agenda of the forum is built around four main lines of action:

- The creation of an “observatory of digital uses”, including a yearly document compiling data related to connectivity, terminals and habits
- A joint study programme
- A dedicated team working on the protection of minors against online pornography
- Workshops for sharing best practices, methodologies and specific expertise, as well as knowledge to better understand the work of each institution

Le Pôle has so far published one study related to ‘SVOD service offers and economic analysis of multiple subscriptions’ and is currently undertaking two further audiovisual and broadcasting related studies.

European approaches

At the EU level, there is a suite of legislative initiatives and proposals covering the digital space (most notably the GDPR, as well as the proposed DSA and DMA). The challenges of GDPR enforcement have amplified the debate around cooperation under DSA as its implementation will engage even more numerous actors at different levels and in diverse sectoral areas, requiring the consideration and

coordination of a large set of sectoral laws. We are also beginning to see a wider recognition of the need for cooperation in more contained policy recommendations. For example, the Draft Council of Europe recommendation on elections communications explicitly advocates a model of regulatory cooperation within the text.

Regulatory cooperation under the DSA

On 15 December 2020, the European Commission submitted to the European Parliament and the European Council a proposal for a regulation on a Single Market for Digital Services, known as the Digital Services Act (DSA)¹⁴.

As a reminder, the proposal provides for a *“horizontal framework for all categories of content, products, services and activities on intermediary services”*, and especially providers of hosting services such as online platforms, with the aim to *“ensure harmonised conditions for innovative cross-border services to develop in the Union”* and *“addressing the risk of legal fragmentation caused by divergence of Member State regulatory and supervisory approaches”*, except when a more specific rule applies (lex specialis such as the AVMSD). The enforcement of this new Regulation would involve several actors: while the European Commission will be competent to supervise the specific obligations related to very large online platforms, each Member State will have the responsibility to appoint their national competent authority(ies) to deal with the other obligations related to online intermediaries and to designate a single contact point, the Digital Services Coordinator (DSC). All the national DSCs will join a 'European Board for Digital Services', aimed at supporting national DSCs and the European Commission. (For an overview of the proposal, see the Annex n°2).

Such a horizontal and pyramidal framework is likely to require a robust cross-sectoral coordination scheme, implying both structural and substantial collaboration.

- The need for substantial cooperation:

The proposed horizontal-oriented regulation stressed the need to take into account all the potential negative impacts of the dissemination of illegal content and the online business industry on fundamental rights. The DSA acknowledges, for instance, the large range of systemic risks generated by online advertising (*Recital 52*) or by very large platforms' activities with regard to private life, freedom of expression and information, the rights of the child, the protection of public health, civic discourse, or also electoral processes and public security¹⁵. More generally, competent authorities, when enforcing DSA's rules – *in order to act against illegal content, appointment of trusted flaggers, the analysis of platforms' reports or also the assessment of the mitigation measures or action plan proposed by them to tackle those risks* – would be required to achieve a fair balance between the rights and interests involved, including the freedom of expression and information, and the freedom or pluralism of the media, as underlined in Recital 105 of the proposal.

¹⁴ [Proposal for a Regulation on a Single Market For Digital Services](#) (Digital Services Act)

¹⁵ Article 26 of the DSA: All these risks shall be included in the annual risk assessment undertaken by very large platforms.

Such a broad scope of rights and interests at stake will inevitably require gathering a broad range of expertise, traditionally residing in distinct regulatory actors.

- The need for structural cooperation:

The Commission, underlining the horizontal range of obligations of the DSA, emphasises the need for the DSC to coordinate and cooperate with all (other) competent national authorities¹⁶. To apply and enforce the proposed rules, each Member State would have the discretion to appoint one or several competent authorities with specific supervisory or enforcement tasks (such as, for instance, the electronic communications regulators, the media regulator or the consumer protection authority).¹⁷ The role of the DSC (which would likely be one of those authorities) would be to coordinate and ensure the cooperation between all (other) competent national authorities and act as a single point of contact¹⁸.

Structural cooperation mechanisms are likely to be required for the efficient enforcement of the regulation, to ensure a smooth channel of communication between competent authorities. This could involve all relevant national authorities being required to inform the DSC of the acts and decisions they implement.

The imminent DSA and the questions that it raises have already brought some regulators to set up working groups or forums gathering authorities from adjacent sectors to address those challenges¹⁹. In any case, this proposal is likely to act as an accelerator for the nascent cross-sectoral cooperation between regulators.

¹⁶ Recital 73 and art. 38 §2 of the DSA

¹⁷ Recital 72 & 73 and Art. 38 of the DSA.

¹⁸ For instance: Order to act against illegal content or to provide information shall be transmitted to all DSC in the UE (art. 8 & 9, §3); The DSC shall draft each year a single report covering the activities of all competent authorities (art. 44 §3).

¹⁹ For example, the Swedish Press and Broadcasting Authority has launched recently a National digital forum, forum of discussion to address the proposed DSA and its potential implementation. The forum gathers for the moment eight national regulatory authorities (last update: July 2021).

5. Structure of session and presentation of speakers

The DSA and the related challenges of cross-sectoral cooperation will be discussed during the first part of the session as an illustration of institutional cooperation models. The second part will consider the importance of substantial cooperation on specific areas based on some case studies.

For more details on the EPRA thematic plenary session, see the [agenda](#) as well as the [video recording](#).



Alexandre de Streel, Namur University (BE)

Academic Co-Director at CERRE and professor of European law at the University of Namur and the Research Centre for Information, Law and Society (CRIDS/NADI), he is also, since April 2021, the Chair of the EU Observatory on Online Platform Economy.

Focusing his research on regulation and competition policy in the digital economy and the legal issues raised by artificial intelligence, Alexandre de Streel advised the European Commission and the European Parliament on the regulation of online platforms.

During the session, Alexandre de Streel will deliver a (pre-recorded) introductory speech on the challenges of cross-sectoral regulatory cooperation and the issues at stake.



Michèle Ledger, Cullen International

Head of the Cullen International's Media regulatory intelligence service, she is also a researcher at the CRIDS research centre of the University of Namur and a lecturer on the regulatory aspects of online platforms at the postmaster degree course (DTIC).

Specialised in the digital economy practice and with an extensive knowledge of the implementation of the EU frameworks at national level across Europe, Michèle Ledger will be the moderator of our session.

➤ Alexandre de Streel and Michèle Ledger have jointly published a study on the [New ways of oversight for the digital economy](#) (CERRE Publication, February 2021).

See also "[Digital Markets Act: Making economic regulation of platforms fit for the digital age](#)", coordinated by Alexandre de Streel (CERRE Publication; December 2020)



Ben Wagner, Inholland University, TU Delft (NL)

Assistant Professor at the Faculty of Technology, Policy and Management at TU Delft as well as Professor of Media, Technology and Society and Director of the Sustainable Media Lab at Inholland, Ben Wagner is specialised on media governance, human rights and sustainable media systems.

With his research, Ben Wagner looks at ways to adapt media systems to the rapidly changing technological, legal and societal environment. Shortly before the publication of the Digital Services Act package by the Commission, he published a study on the [Governance of Digitalization in Europe](#) (Wagner, Ben, and Carolina Ferro. 2020, Gütersloh, Germany: Bertelsmann Stiftung).

In 2017, Ben Wagner delivered an inspiring keynote at the 46th EPRA meeting in Vienna for the Plenary Session on "News in Digital Age: the role of regulators". This time, Ben Wagner will share his analysis of the Digital Service Act's proposals and discuss some of the institutional challenges related to the governance of digitalization in Europe and the potential implications for EPRA members.

➤ For more information and access to the publications of Ben Wagner: <https://benwagner.org/> [The 2021 German Federal Election on Social Media: An Analysis of Systemic Electoral Risks Created by Twitter and Facebook Based on the Proposed EU Digital Services Act](#) (2021)



Martine Coquet, CSA-FR/ERGA

Director of European and International Affairs at the Conseil supérieur de l'audiovisuel that she joined 13 years ago, she was previously Head of the Legal and Multilateral Department within the Audiovisual Directorate of the Europe and Foreign Affairs' Ministry in France.

Martine Coquet is working closely with Frédéric Bokobza, current Chair of the Subgroup 2 of European Regulators Group for Audiovisual Media Services – ERGA – on '[Completion of the EU regulatory framework relevant for media](#)'.

Martine Coquet will share the views of ERGA on the institutional arrangements that are envisaged to enforce the DSA. She will present ERGA proposals to set up a structure for an effective enforcement of the DSA's provisions on systemic online content moderation and proposals to foster cross-border cooperation between NRAs with the support of a sectoral network.

➤ For more information: ERGA [Proposals aimed at strengthening the Digital Services Act \(DSA\) with respect to online content regulation](#) (adopted on 25 June 2021); [ERGA Statement on the proposals for a Digital Services Act \(DSA\) and a Digital Markets Act \(DMA\)](#) (March 2021)



Ľuboš Kukliš, CBR-SK/ERGA, EPRA Chairperson

Chief Executive at the Council for Broadcasting and Retransmission of Slovakia, he was Chair of the European Regulators Group for Audiovisual Media Services (ERGA) in 2018 and 2019 and currently leads ERGA's Sub-group 3 on '[Disinformation](#)' which focuses this year on media plurality and on the Commission's [European Democracy Action Plan](#), building on the previous monitoring of the [Code of Practice on Disinformation](#). Ľuboš is also Chairperson of EPRA, he was [elected on 20 May 2021](#) for a mandate of two years.

During the session, he will highlight the lessons learned by ERGA from the monitoring of the code of practice on disinformation during the elections and also elaborate on the need for coordination with other players to face the challenges in terms of elections and disinformation.

- For more information: ERGA [Position on the next instalment of the Code of Practice on Disinformation](#) (May 2021)



Marie-Hélène Boulanger, European Commission/European Cooperation Network on Elections-ECNE

Before joining the European Commission, Marie-Hélène Boulanger started her career in the field of data protection at the University of Namur (BE) and within the Belgian Data Protection. Within the European Commission, she worked for the data protection unit of the Directorate-General Internal Market of the European Commission before becoming responsible for the legal team of the large-scale IT systems' unit of the Directorate General of the European Commission in charge of Justice and Home affairs. Since July 2014, she is the Head of the Unit in charge of citizenship rights including electoral rights and free movement. She is also deputy director in charge of equality and citizenship.

During the session, she will present the work of the [European cooperation network on elections \(ECNE\)](#) and discuss the regulatory cooperation challenges in terms of elections, disinformation & online political advertising.



Tania Van den Brande, Ofcom (UK)

Director of Economics at Ofcom, she worked previously at RBB Economics as an Economic Consultant and advised clients in front of European and national competition authorities in relation to a wide range of competition matters.

During the session, Tania Van den Brande will report on recent initiatives such as the [Digital Regulation Cooperation Forum](#) - and Ofcom's views regarding the interplay between competition and audiovisual regulation and the potential of cooperation to address online harms.

- For more information: [Online market failures and harms](#): An economic perspective on the challenges and opportunities in regulating online services - A study by Ofcom, October 2019.

Anne-Jel Hoelen, Autoriteit Consument & Markt (ACM) (NL)



Lawyer and Senior Enforcement Official at the Netherlands Authority for Consumers and Markets (ACM), Anne-Jel Hoelen is specialised on the protection of consumer rights in the digital economy. Her work particularly focuses on the interplay of consumer protection, data protection and competition law as well as online unfair commercial practices and media and commercial communication related issues.

During the session, Anne-Jel Hoelen will present the ACM approach towards cross sectoral cooperation.

➤ For more information on ACM's work: see their [Guidelines on the protection of the online consumer](#)

6. Key points from the session and the discussion

1. KEY BENEFITS OF CROSS-SECTORAL REGULATORY COOPERATION

- Cross-sectoral regulatory cooperation is essential for the provision of an effective, coherent, clear and transparent regulatory framework.
- The emergence of online regulation frameworks makes the need for cross-sectoral cooperation more acute, because of its complexity. A cooperative approach is also conducive to more robust decision-making in such a complex, quick-paced environment.
- A cross-sectoral approach also enables an overall understanding of all the issues at stake to ensure an efficient protection of fundamental rights.

2. TYPOLOGY OF REGULATORY COOPERATION: MULTI-LEVEL STRUCTURE & VARYING INTENSITY

The main models of cooperation between regulators include:

1. Horizontal cooperation: between audiovisual NRAs and other NRAs within a country. It needs to be strengthened and enlarged.
2. Vertical cooperation: between member States and the European Commission and between NRAs from the same field but from different countries (as in ERGA). Vertical cooperation is crucial given the global nature of many online platforms.
3. A mix of horizontal & vertical cooperation: this most advanced level involves a complex interplay between various legal instruments and national and European frameworks.

The scale of intensity of the cooperation between regulators from adjacent sectors can vary considerably from a mere exchange of information/best practices to a full merger between sectoral authorities. Alternatively this could take the approach of the establishment of a cross-sectoral cooperation forum (e.g. DRCF in the UK).



- For more details on institutional aspects of cross-sectoral regulation, see the introductory video by Alexandre de Stree: <https://www.youtube.com/watch?v=aCdnExMrXzU>

3. ENSURING EFFICIENT IMPLEMENTATION OF THE DSA: FOCUS ON COOPERATION MECHANISMS

How to enforce effective compliance in the online sphere will be a major challenge for the Digital Services Act. Cooperation mechanisms will play a key role. The shaping of institutional arrangements for that purpose (federated vs. centralised structure) as well as the repartition of tasks and interplay between the national, European, sectoral and horizontal levels are hotly contented issues.

- Ben Wagner's proposal:

1. **Strengthen national coordination processes** by involving a mix of various actors depending on their field of competence (agencies, regulators, stakeholders...) and transpose such a **cross-sectoral cooperation on a European level**. Defining (just) one regulatory agency per country won't work.
2. Create **pools of experts** at a European level (EU and also Council of Europe level) to tackle the lack of resources of national authorities and ensure their capacity in terms of personnel. Additional regulatory capacity pools should systematically be integrated into all digital regulation frameworks (DSA/DMA/AIA).

- Link to Ben Wagner's presentation: <https://www.epra.org/attachments/54th-epra-meeting-cross-sectoral-cooperation-ben-wagner-keynote>

- ERGA's proposal:

1. On a European level, **rely on existing sector-specific networks** (such as ERGA) and focus the scope of intervention of the European Board for Digital Services only to deal with strategic and cross-cutting coordination issues.
2. On a national level, **rely mainly on NRAs' competence and expertise**; the Digital Services Coordinators (DSCs) should only handle cross-sectoral and cross-border issues for administrative and coordination purposes.
3. Under the coordination of ERGA, **foster cross-border relationships within a dedicated cooperation framework**, involving the regulatory authorities of the countries of destination, especially with regard to very large online platforms (VLOPs).
4. All the above would eventually **require strengthening ERGA** ("ERGA+") to make it fitter for enlarged tasks under the DSA.

- Link to Martine Coquet's presentation: <https://www.epra.org/attachments/54th-epra-meeting-cross-sectoral-cooperation-csa-presentation>

4. CASE STUDIES WHERE CROSS-SECTORAL COOPERATION IS KEY

Elections & disinformation/online political advertising:

- 1) Lessons learned from the monitoring of the Code of practice on disinformation by media NRAs
 - The exchange of information and knowledge between media NRAs that was required by the monitoring of the Code of practice on disinformation allowed involved NRAs to better understand the skills that are needed for conducting such tasks, develop their expertise, and experience negotiation with large online platforms.
 - The cooperation with the data protection authorities is crucial as online actors often use the GDPR as an excuse not to provide data.
 - The cooperation of media NRAs with electoral authorities helps get relevant knowledge and understanding regarding election media coverage and its impact.

- 2) EU Commission initiatives to strengthen cross-sectoral cooperation in the area of elections
 - In the wake of the Cambridge Analytica scandal, and ahead of the European Parliamentary elections in 2019, the European Commission became aware of the need for closer cooperation and launched a package of pragmatic measures, taking the variety of regulatory structures and powers at national level into account ('the electoral package'). This involved:
 - On national level, creation of a network gathering relevant authorities (such as electoral authorities, data protection authorities, cybercrime authorities and media regulators) to protect the resilience and the integrity of elections and the democratic process.
 - The national networks were required to establish a contact point; the contact points should sit together in the framework of the European Cooperation Network on Elections (ECNE).
 - Recommendations on transparency of advertising and cybersecurity.
 - Recommendations to member States to provide the competent authorities with sufficient means so that they can fulfil their duties.
 - The feedback was generally very positive, even though the national networks did not systematically include the data protection authority or the media regulators. On a European level, the Commission established links with other organisations, such as ERGA, EDPS, EDPB, OSCE, or the Council of Europe, to form an open platform pooling effort to address matters of elections, exchanging best practice and learning from each other.
 - ECNE also conducted a mapping of relevant rules around electoral contents.
 - The EU Commission is currently working on a draft regulation on the transparency of political advertising (expected for 23 November 2021²⁰ – see consultation and inception impact assessment). Ireland is currently drafting legislation on the matter; the Netherlands developed the first EU code of conduct on political ads.

Key findings: Regulatory cooperation can only close the gaps and address threats to electoral processes if it operates cross-sector. A pragmatic approach gathering various bodies can go a long

²⁰ Note of EPRA Secretariat: On 25 November 2021, the European Commission presented a proposal for a Regulation of the European Parliament and of the Council on the transparency and targeting of political advertising: https://ec.europa.eu/info/sites/default/files/2_1_177489_pol-ads_en.pdf

way, as authorities and countries are keen to learn from each other: in Slovakia, horizontal cooperation was instrumental to develop an improved legal framework dealing with elections.

Online harms: case-studies on coordination between media regulation, competition and consumer protection policy areas

- The issue of online harms raises common themes shared by various regulatory fields, such as:
 - the role of online intermediaries: *lack of competition, lack of protection against harmful conduct and content, challenges to the sustainability of traditional business models, etc.*
 - the role of data: *the lack of access to data, the lack of competition and the privacy issue.*
 - the role of algorithms: *content recommendation algorithms, the risk of echo chambers etc.*
 - the advertising business models: *pluralism and privacy issues, etc.*
 - the lack of information and behavioural bias: *the lack of transparency for consumers, the impact of nudging techniques on making choices.*
- Strategy and policy cross-sector coordination are key to a holistic approach. It is imperative:
 - to identify where policy objectives interact between sectors and make sure that they align: *e.g. limiting gatekeepers' powers to help plurality, sustainability of news and preserve competition.* Ofcom is currently working with the newly formed Digital Markets Unit²¹ to develop a code of practice to address these objectives.
 - to mitigate (unintended) negative impacts of a sectoral policy on another area: *e.g. a gatekeeper can provide access to more diverse content, but it can amplify the dissemination of harmful content.* This requires coordination between competition and media NRA.
 - to balance conflicts between policy objectives: *e.g. The decision to remove the application "Parler" [a social network competitor of Twitter] from the web hosting services of Amazon can be considered as a fair measure to tackle the dissemination of harmful content but also as an unfair competitive advantage for Twitter [an important Amazon partner].*

Key findings: media NRAs and competition authorities need to talk to each other and discuss potential trade-offs in case of conflicting objectives. How to manage the interplay between media regulation and competition policies is still an open question that needs to be addressed.

Examples of horizontal cross-sectoral cooperation:

- In the UK, the creation of the [Digital Regulation Cooperation Forum](#) (DRCF) (See above)
- In the Netherlands, the [Authority for Consumers and Markets \(ACM\)](#) is a convergent body in charge of competition oversight, consumer protection as well as sector-specific regulation of several sectors (such as telecoms). The cooperation between ACM, the Dutch media NRA (CvdM) and the Dutch Advertising Code Committee was established through a Memorandum of Understanding (*regular meetings of boards, central contact points, sharing of technical and legal knowledge, creation of a common data scientists pool*). [On 13 October](#), the ACM, the CvdM, the DPA and the authority for financial markets announced they would intensify cooperation through the launch of the **Digital Regulation Cooperation Platform** (Samenwerkingsplatform Digitale Toezichhouders). SDT aims to exchange knowledge and experiences in areas such as AI, algorithms, data processing, online design, personalization, manipulation, and misleading practices. They committed to joint investments in knowledge,

²¹ [Digital Markets Unit - GOV.UK \(www.gov.uk\)](#)

expertise, and skills. They will explore how to strengthen each other's work in enforcement procedures, e.g. by dealing with digital market problems collectively.

- Link to Tania Van Den Brande (*Ofcom – UK*)'s presentation:
<https://www.epra.org/attachments/54th-epra-meeting-cross-sectoral-cooperation-ofcom-presentation>
- Link to Anne-Jel Hoelen (*ACM – NL*)'s presentation:
<https://www.epra.org/attachments/54th-epra-meeting-cross-sectoral-cooperation-acm-presentation>

Key lessons for regulators

- In the online sphere, cooperation and coordination is more important than ever for the sake of coherence and efficiency.
- While some degree of cooperation has always been present, it needs to gain in intensity; the DSA will no doubt act as an accelerator.
- Audiovisual regulators will increasingly be involved in the online sphere, which is multifaceted by nature, it is thus worth investing time and resources in cooperation.
- The issue of personnel, resources and training is key for media regulators – expert pools on a European and national level could help alleviate the needs.
- Be proactive/learning-by-doing: issues relating to the online sphere can be very complex, it is therefore important to experiment, and reach out to other authorities and stakeholders.
- Join forces: the exchange of information and knowledge between NRAs can help them be stronger in the negotiations with the platforms.
- Be transparent and accountable: the level of transparency and accountability required from the platforms should also apply to regulatory authorities themselves.
- Strategy is key: it is important to identify the policy objectives that interact between sectors and make sure they align.
- Potential areas for coordination: there are many areas where coordination between regulators would be of benefit: joint research, access to and collection of data and the promotion of media/digital literacy, election regulation and targeted online advertising, regulation of influencers, media plurality, prominence of general interest content, etc. They may be many more!

5. Annex:

• Suggested list of reading materials

- Interplay between EU competition law, consumer protection and data protection law: Strengthening institutional cooperation to increase enforcement effectiveness of EU laws in the digital economy – *by Inge Graef, Giorgio Monti, Alexandre de Streef*
- Digital Attention Intermediaries: A Competition Law Perspective – *by Alexandre De Streef*
- [Governance of Digitalization in Europe: A contribution to the Exploration Shaping Digital Policy - Towards a Fair Digital Society?](#) *by Dr Ben Wagner and Dr Carolina Ferro*, May 2020, Bertelsmann Stiftung, Carl-Bertelsmann-Straße 256 - 33311 Gütersloh
- [New ways of oversight for the digital economy](#), *by Alexandre de Streef and Michèle Ledger*, CERRE publication, February 2021
- [Proposals Aimed at Strengthening the Digital Services Act \(DSA\) with respect to online content regulation Act](#), *by ERGA*, June 2021
- [Online markets failures and harms: an economic perspective on the challenges and opportunities in regulating online services](#), *by Ofcom*, October 2019
- The UK Digital Regulation Cooperation Forum: [workplan 2021/2022](#) and the related [Ofcom's press release](#)
- Introductory video on cross-sectoral cooperation by Alexandre de Streef (Namur University/CERRE) for the EPRA Plenary theme: "Cross-sectoral cooperation between regulators":
<https://www.youtube.com/watch?v=aCdnExMrXzU>

- **Appendix Table: An overview of the DSA's proposal**

<p>To whom does it apply?</p>	<ul style="list-style-type: none"> ▪ Intermediary services, e.g. access providers; ▪ Hosting services, e.g. cloud providers; ▪ Online platforms, e.g. marketplaces or social media ▪ Very large online platforms
<p>What changes?</p>	<ul style="list-style-type: none"> ▪ For all categories <ul style="list-style-type: none"> ▪ Prohibition of general monitoring or active fact-finding obligations; ▪ Mandatory point of contact for authorities, and ▪ Obligation to provide users with information on restrictions on the use of data (e.g. content moderation mechanisms or algorithmic decision-making) ▪ For online platforms <ul style="list-style-type: none"> ▪ Creation of a redress mechanism and an out of court dispute settlement mechanism for users to challenge platform’s decisions; ▪ Traceability of all users involved in a contract celebrated at distance (KYC procedures), and ▪ Transparency obligation for online advertising. ▪ For very large platforms: all the abovementioned plus additional obligations considering the higher intrinsic risks for society. <ul style="list-style-type: none"> ▪ Obligation to carry independent audits to prevent misuse of systems; ▪ Transparency obligations for the algorithms used to rank content to a user; ▪ Obligation to provide the user with an option that does not use profiling, and ▪ Obligation to share data with authorities and researchers.
<p>Supervision & Sanctions</p>	<ul style="list-style-type: none"> ▪ Supervision: by each Member State, supported by the European Board for Digital Services. For very large platforms supervision is performed by the European Commission ▪ Fines: Fines can up to 6% of annual universal turnover