KU LEUVEN CiTiP

CENTRE FOR IT & IP LAW

imec

Regulatory enforcement in the age of institutional interdependence *Lessons learned from the Data Act*

Charlotte DUCUING and Alexandra PAPAGEORGIOU

Centre for IT & IP Law, KU Leuven

charlotte.ducuing@kuleuven.be / alexandra.papageorgiou@kuleuven.be

NIG Conference 2026 @ KU Leuven Instituut voor de Overheid

5-6 February 2026



1) Setting the scene

2) Zoom-in on Article 37 DA

3) Lessons learned from Article 37 DA as a case study

4) Conclusion & Outlook

1) Setting the scene

EU regulatory context

Traditional role of regulatory agencies (in principle)

- Legislative enforcement (sometimes regulatory role)
- Expertise in a specific field
- (Deemed) Apolitical character of activities

Current regulatory landscape

- Proliferation of regulatory agencies
- Growing policy & legislative interdependence and overlaps
  ⇨ **growing interdependence& overlaps between regulatory agencies('s competences)**

🔍 **Institutional stakeholders** (and not societal ones) as focal point

The Data Act (DA)

Regulation (EU) 2023/2854 on harmonised rules on fair access to and use of data

- **Objective:** facilitation of data flows in the EU
  - ↪ Rules on business-to-business/business-to-government/business-to-consumer data sharing, switching between providers, interoperability…
- **Interaction with (many) other legal frameworks**
  - e.g. on personal data protection, competition, consumer protection, cybersecurity, IPRs, sectoral (i.e. product) legislations
- **Article 37 DA**: establishment of competent authorities responsible for monitoring and enforcing the DA
  - Other enforcement mechanisms (Articles 4-5 and 10 DA)
  - Cooperation with European Data Innovation Board (Article 42 DA)

⚠ Possible revision by the Digital Omnibus

- Article 37 DA left untouched **but** expansion of regulatory scope

2) Zoom-in on Article 37 DA

Overview of Article 37 DA

Scope

- Responsibility for enforcement of **all** DA provisions
- Characteristics
  - Impartiality
  - Independence
  - Sufficient resources
  - Expertise

Institutional organisation

- Wide discretionary margin enjoyed by Member States
  - **One/many authority(ies)?**
  - Data Protection Authorities (**DPAs**) required
- Different **types of cooperation** (vertical, horizontal, across borders)

Competences of competent authorities

1) Monitoring of DA application
2) Handling of complaints on DA infringements
3) **Cooperation with other enforcement authorities**
4) **Promotion of data literacy**
5) Facilitation of (mandatory cross-border) data sharing

Jurisdictional aspects

- Territorial competence of national courts of place of establishment

2.1. Institutional organisation & cooperation

- Large room of manoeuvre left to Member States
  - ↪ Liberty in decision-making re organisation of enforcement ⇨ **centralised or decentralised model** (one/many competent authorities)
- Cooperation between authorities
  - Many occurrences, but with little clarity on substantial content
  - Principle of **sincere cooperation** (Article 4(3) TFEU)
    - AG Rantos in *Meta vs Bundeskartellsamt (C-252/21)* : responsibility of the EU legislator to adopt clear rules on cooperation mechanisms
    - Ex post tool to resolve conflict ⇨ *not a programmatic principle!*

2.1. Data literacy

- Little discussion on the term so far
- Classical understanding of data literacy
  - ↪ Empowerment of individuals to **navigate** large amounts of data
- Institutionalisation of data literacy in Article 37 DA
  - ↪ Individuals as market actors capable of understanding the value of their data ⇨ participation in data transactions ⇨ data value increase
  - ↪ 'Educational role' of public authorities

3) Lessons learned from Article 37 DA as a case study



A paradox

Extensive reliance of the EU legislature on regulatory enforcement while aware of (most of) the associated challenges

WHY?



Tentative explanations

Bridging general legal principles with local circumstances	Delegation of hard choices	Path dependencies
• Very relevant with data because pervasive & diverse	• In case of conflicting views amongst policy-makers • In case of conflicting interests between concerned actors	• **Cultural dependency:** alternatives not considered • **Institutional path dependency**: policy prioritization issue

4) Conclusion & Outlook

imec

imec KU LEUVEN CiTiP
CENTRE FOR IT & IP LAW

Conclusion & Outlook

- Regulatory enforcement **victim of its own success**
- Institutional interdependence has transformed from a marginal issue into a **pure structural feature of EU regulatory governance**
- Upheaval created by the Digital Omnibus: what prospects?
  - Simplification vs efficiency
  - Reinforcement of the role of EDIB re enforcement of the new Data Act
- How to overcome path dependency (i.e. without using a chainsaw)?

KU LEUVEN CiTiP

CENTRE FOR IT & IP LAW

imec

Regulatory enforcement in the age of institutional interdependence *Lessons learned from the Data Act*

Charlotte DUCUING and Alexandra PAPAGEORGIOU

Centre for IT & IP Law, KU Leuven

charlotte.ducuing@kuleuven.be / alexandra.papageorgiou@kuleuven.be

NIG Conference 2026 @ KU Leuven Instituut voor de Overheid

5-6 February 2026

