

Request for Submissions

From Individual Remedy to Systemic Risk: The Legal Framework Around Non-Binding ODS Decisions

Article 21 Advisory Board

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KEYWORDS

Out-of-Court Dispute Settlement; Article 21 DSA; Implementation of ODS Decisions; Good Faith Cooperation; Articles 34 and 35 DSA; Systemic Risk Assessment; Analysis of implementation data; Differences across platforms.

INTRODUCTION

This discussion paper outlines the topic that will be addressed by the Article 21 Advisory Board at its next meeting. It provides background about the Board and the process, sets out the empirical and legal context, and opens up the questions on which the Board would welcome stakeholder input.

The administration of the Article 21 Advisory Board shares this paper with stakeholders who have an interest in the topic and invites them to submit their perspectives.

What is the Article 21 Advisory Board?

The Article 21 Advisory Board brings together researchers and civil society organisations to facilitate discussion and provide practical guidance on how out-of-court dispute settlement (ODS) bodies should operate. It also analyses the challenges and potential of ODS under the Digital Services Act (DSA), including the transparency reports submitted by ODS bodies and their significance for

systemic risk assessments. The Board's work aims to promote high standards for ODS bodies, enhance transparency, and link individual remedies under the DSA with systemic perspectives on content moderation.

The Board was founded by User Rights in 2024 and has since published four discussion reports on statements of reasons, fundamental rights, misinformation, and the reporting and transparency of ODS bodies. From 2026 onwards, it is co-convened by the University of Osnabrück and the DSA Observatory at the University of Amsterdam, in cooperation with User Rights. It is co-chaired by Prof. Dr. Hannah Ruschemeier (University of Osnabrück) and Associate Prof. Dr. João Pedro Quintais (DSA Observatory, University of Amsterdam).

What is the scope of this paper?

This paper describes the problems and questions the Board will engage with in its next meeting. It is aimed at laying these questions out clearly to interested stakeholders and inviting their input.

How can stakeholders provide input?

The administration of the Article 21 Advisory Board invites stakeholders to provide their input on the questions set out above, and to raise any additional points they believe are relevant. Please

provide your submission no later than **14 August 2026** to outreach@user-rights.org.

When will the meeting take place and who will participate?

The 5th meeting of the Article 21 Advisory Board will take place online at the beginning of September; the specific date will be set once participants are finalised.

The Board will be composed of seven participants: the two co-chairs, two civil society representatives, two invited academic guest discussants, and one representative from User Rights. The meeting will be moderated by one of the co-chairs.

What happens with stakeholder input?

Prior to the meeting, the Board administration will compile all feedback received into a briefing note for the Board. Stakeholder submissions will inform the discussion and will be reflected in the discussion report published after the meeting.

The report will summarise:

- The key issues addressed.
- Stakeholder input and submissions.
- Main points from the discussion.
- Any recommendations reached by the Board.

Where stakeholders consent, their names and websites will be listed in the final report. For an example of how this is done, see the "Discussion Report No. 4: Reporting and Transparency of Out-of-Court Dispute Settlement Bodies under Article 21 DSA" on our [website](#).

What will happen after the Board meeting?

Following the meeting, the Advisory Board will publish the discussion report and host an event in mid-September open to all stakeholders who provided feedback or submissions.

Contact

You can find all relevant information and news on the Board's website: <https://user-rights.org/de/advisory-board>.

To contact the Board, please write to: outreach@user-rights.org.

PROBLEM STATEMENT

In early 2026, User Rights — the first certified out-of-court dispute settlement body under Article 21 DSA focusing on social media — published its [2025 Transparency Report](#). The report follows the recommendations of the [Article 21 Advisory Board's August 2025 Discussion Report on the reporting and transparency of ODS bodies](#) and, as the Board suggested, includes detailed reporting on the implementation of ODS decisions by platforms — one of the essential areas of transparency for the emerging dispute settlement landscape.

The data confirm both the promise of out-of-court dispute settlement and a substantial fault line in its current operation. User Rights decided 3,630 cases in 2025, including for TikTok, Facebook, Instagram, Pinterest, and LinkedIn. In almost 85% of completed cases, the original platform decision was found to be unfounded on independent review. Whether faulty platform decisions are ultimately reversed, however, differs starkly across platforms.

TikTok provided immediate remedy in 52.2% of admissible proceedings — meaning it reviewed and corrected its decision upon commencement of proceedings, before any substantive review was necessary. This is one effective way for users to obtain the outcome they seek. In the cases where TikTok did not self-correct and User Rights issued an adverse substantive decision, TikTok implemented that decision in 35.7% of cases — the highest rate among the platforms. Taken together with the high rate of immediate remedy, complainants ultimately achieved their desired outcome in 69.3% of proceedings,

and measured against all admissible proceedings involving TikTok, non-implemented decisions account for only 9% of cases.

Meta, by contrast, rarely corrects its decisions on its own initiative — providing immediate remedy in only 2.2% of admissible Instagram proceedings and 1.2% of Facebook proceedings — and also implements adverse decisions at a significantly lower rate, in only 3.8% of cases (Instagram 4.3%, Facebook 2.8%), despite User Rights finding the underlying measures unjustified in 92.8% of substantively reviewed cases (Instagram 94.0%, Facebook 90.6%). Complainants achieved the desired outcome only in 5.8% of cases. For affected users, this means: they submit a case against a platform decision, receive a decision in their favour from User Rights — and the platform changes nothing nonetheless.

One of the main findings of the 2025 Transparency Report is that the corrective ODS system under Article 21 DSA only works as the legislator intended when platforms cooperate and implement decisions. When they do not, the right to independent redress under Article 21 risks being reduced to a formality. Implementation is therefore the practical pivot on which the effectiveness of the Article 21 framework turns.

These findings sit alongside considerable legal uncertainty. On the one hand, Article 21(2) DSA states that ODS bodies cannot issue binding decisions, which therefore are not enforceable. On the other hand, platforms must cooperate in good faith to resolve disputes (Article 21(2) DSA), which might require them to carefully consider every ODS decision or provide users sound justification when they do

not follow an ODS bodies' decision. Furthermore, low implementation rates of ODS decisions may suggest flaws in platforms' content moderation processes that might impact users' fundamental rights. Such flaws could be considered systemic risks under Article 34(1) DSA, which platforms must address. The Board will explore these two complementary questions regarding the implementation of, and consequences of not implementing, ODS decisions.

Focus Area One: The implications of the principle of Good Faith for the implementation of ODS decisions

The principle of good faith in Article 21(2) DSA, first subparagraph, requires platforms to engage with ODS bodies in good faith and "with a view to resolving the dispute." ODS decisions are not, however, binding on platforms (Article 21(2) DSA, third subparagraph). This raises the question of what obligations platforms have at the implementation stage of the dispute. Questions the Board may consider in its discussion include the following:

- Whether the good faith obligation extends beyond the issuance of the decision into the implementation phase, and what consequences would follow.
- Whether platforms must inform ODS bodies and users whether they will implement a decision, and what such information should contain.
- Whether and on what basis well-reasoned ODS decisions might carry particular weight at the implementation stage; what would count as a legitimate ground for refusing to implement; and how mere

disagreement with the outcome should be treated.

- What the certification framework under Article 21(3) — expertise, independence, and clear rules of procedure — implies for the standing of ODS decisions in implementation.
- What role Digital Services Coordinators and the Commission should play in shaping platform practice on these points, and how implementation should be monitored.

Focus Area Two — Systemic risks arising from the failure to implement ODS decisions

Article 34 DSA requires VLOPs to assess systemic risks stemming from the design and functioning of their services. Article 34(2) directs them to consider, in particular, (b) their content moderation systems and (c) the applicable terms and conditions and their enforcement. Article 34(1) lists the categories of risk concerned, including (a) the dissemination of illegal content through their services, (b) fundamental rights, (c) civic discourse, and (d) other harms. Article 35(1) DSA mandates reasonable, proportionate and effective mitigation measures against those risks, for example by (b) adapting their terms and conditions and their enforcement; testing and adapting their algorithmic systems, including their recommender systems; or (g) initiating or adjusting the implementation of the decisions of ODS bodies.

Questions the Board may want to explore in its discussion include:

- Whether and how the implementation rate of platforms is relevant when assessing systemic risks.

- Which sources of risk under Article 34(2), and which categories of risk under Article 34(1), need to be considered when the overturn rate is high and the implementation rate is low.
- How ODS decisions and aggregated implementation data might inform Article 35 mitigation measures, as well as supervision by Digital Services Coordinators and the Commission.