

DISCUSSION REPORT

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

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

Participants of the 5th meeting of the Article 21 Advisory Board, held on 3 September 2026:

Co-Chairs of the Board:

[Prof. Dr. Hannah Ruschemeier](#)

[Assoc. Prof. Dr. João Pedro Quintais](#)

User Rights representative:

[Dr. Niklas Eder](#), Co-Founder and CEO

Guest discussants:

[Christian Cirhigiri](#), CDT Europe

[Beatriz Saab](#), ISD Germany

[Dr. Suzanne Vergnolle](#), C4DT, EPFL

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

The [Article 21 Advisory Board](#) discusses the most challenging questions arising in the development of out-of-court dispute settlement (ODS) under Article 21 of the Digital Services Act (DSA). It provides guidance to ODS bodies and regulators, and informs the work of civil society organisations and researchers. Founded by User Rights in 2024, it has been co-convened since 2026 by the University of Osnabrück and the DSA Observatory at the University of Amsterdam, in cooperation with User Rights, and has published four discussion reports to date.

This report addresses the topic of the Board's fifth meeting, held online on 3 September 2026: the legal framework around non-binding ODS decisions. In preparation of the meeting, the Board invited stakeholders to provide input on the questions at hand. Eight organisations and individuals submitted written contributions. The key points raised have been integrated into this report, and each submission is summarised below.

PROBLEM STATEMENT

This section outlines the problem and topic the Board engaged with in its meeting.

ODS decisions are not binding under Article 21(2) DSA. Platforms nonetheless differ sharply in how they respond to decisions issued against them, and that difference determines whether the right to independent dispute resolution has practical value.

According to [User Rights' 2025 Transparency Report](#), the original platform measure was found unfounded in almost 85% of completed cases. TikTok provided immediate remedy in 52.2% of admissible proceedings and implemented adverse substantive decisions in 35.7% of the remaining cases, so that complainants achieved their desired outcome in 69.3% of proceedings. Meta implemented adverse decisions in 3.8% of cases (Instagram 4.3%, Facebook 2.8%), although the underlying measures were found unjustified in 92.8% of substantively reviewed cases; complainants achieved the desired outcome in 5.8% of cases.

The corrective mechanism of Article 21 DSA can work as the legislator intended only where platforms cooperate and implement decisions. Where they do not, the right to independent dispute resolution is reduced to a formality. Implementation is the practical pivot on which the effectiveness of the Article 21 framework turns.

Two questions follow, addressed here in turn: what the good faith obligation requires at the implementation stage, and how a failure to implement on the part of the provider engages the systemic risk framework of Articles 34 and 35 DSA.

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 following questions:

- 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; (d) testing and adapting their algorithmic systems, including their recommender systems; or (g) initiating or adjusting the implementation of the decisions of ODS bodies.

This raises the following questions:

- Whether and how the implementation rate of ODS decisions by 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.

CONCLUSIONS REACHED BY THE BOARD

This section reflects the discussion and the main considerations emphasised during the Board's fifth meeting.

Good faith and the implementation of ODS decisions

The Board concluded that good faith under Article 21(2) of the DSA is a flexible yet legally binding standard that covers all ODS phases, including the implementation of decisions. The Board noted that good faith is used across many fields of law, requiring honest, loyal and reasonable conduct. It is a deliberately open standard, whose content is supplied by context, and it operates in particular as a threshold against the misuse of rights. The Board emphasised that the context of Article 21(2) of the DSA is supplied by the legislative history. The good faith obligation was introduced as a compromise to replace the originally proposed binding nature of decisions and in response to the objection that ODS bodies must not become quasi-state courts without the legitimacy the rule of law requires. The Board highlighted that a concession made for that purpose cannot be converted into a licence for inaction: were good faith satisfied by corresponding with an ODS body while not implementing its decisions, Article 21 would add no value to the internal complaint-handling mechanism of Article 20 of the DSA, and the establishment of an independent certified body would serve no purpose. The false promise of an effective dispute settlement system would also undermine users' trust in the DSA as a whole, which could not have been the legislature's intention. The Board noted that the wording points the same way, since the obligation is to engage "with a view to resolving the dispute" and a user who obtains a decision and remains in the position they occupied before has not had their dispute resolved. Implementation forms part of resolution, and the Board considered non-implementation at rates of 80 to 90% generally irreconcilable with the good faith standard.

The Board acknowledged that platforms are not required to implement every decision, but that unreasoned non-implementation violates the principle of good faith. It therefore emphasised that platforms must respond to ODS bodies' decisions under Article 21 of the DSA, and that the absence of a response does not meet even a minimal definition of the standard. Where a decision is not implemented, the platform must justify its reaction by providing specific reasons relevant to the individual case. These reasons facilitate the distinction between a platform legitimately declining a poorly reasoned decision and one that is systematically ignoring well-reasoned ones.

The Board highlighted three key advantages of mandatory platform responses to ODS decisions: the reporting is operationally simple; it generates the granular data required for systemic risk assessments; and it creates a contemporaneous record of the platform's position, which is important if a dispute subsequently reaches a Digital Services Coordinator or a court.

The Board further emphasised that good faith operates as a reciprocal standard. Where an ODS body issues poorly reasoned decisions, limited engagement by the platform may satisfy the obligation; conversely, if a body documents high-quality reasoning of their decision, the platform's obligation to engage at implementation rises accordingly. The Board described good faith in this respect as a lever, increasing the burden on platforms to explain non-implementation of ODS decisions in proportion to the decisions' reasoning. It noted, however, that general references to alleged poor decision quality do not satisfy legal requirements: especially where one body issues decisions of the same standard to different platforms and obtains a high response rate from one and near-silence from another, this suggests that the non-responsive platform fails to fulfil its obligation to respond.

The Board further noted that the implementation of decisions must be viewed in conjunction with the effects of the good faith obligation across different phases in the ODS process. Where platforms refuse to engage in legitimate ODS proceedings, for example by not providing relevant content or legal grounds for the moderation action in question, the ability of ODS bodies to conduct in-depth assessments of the facts of the cases are generally limited, often resulting in decisions being made on formal grounds.¹ The Board emphasised that, while these decisions are legitimate and valid, platforms may still refuse to implement them. The Board therefore noted that a lack of cooperation in good faith at any stage can jeopardise the success of the dispute settlement process as a whole.

The Board noted that ODS bodies' certifications generally support the standing of decisions at the implementation stage. ODS bodies are not active on an unregulated free-market, but certified by a Digital Services Coordinator, which supplies a threshold of quality control: in the certification process, ODS bodies need to prove their independence, expertise, transparency, efficiency, and the fairness of their rules of procedure under Article 21(3) of the DSA. Given the obligation to work together in good faith and due to their certification, ODS bodies' decisions should therefore generally be considered of sufficiently high quality to require implementation responses from the platforms.

However, the Board pointed out two factors that can affect the certifications' presumptive effect on ODS decision quality: Firstly, the DSA barely specifies the extent of a Digital Services Coordinator's involvement beyond the (re-)certification process. Secondly, unlike the mechanism available in respect of trusted flaggers, there is no clear route by which a platform may raise concerns about an ODS body with the certifying authority.

ODS bodies can address these issues by consistently demonstrating their good faith and the quality of their work: by publishing decisions, by providing researchers with access to a comprehensive database of decisions,² by submitting their work to academic scrutiny, and by developing quality guidelines individually and collectively, for example within the ODS Network or via institutions like the Article 21 Advisory Board.³ Although guidelines developed within the sector may remain self-referential to a certain extent, they provide transparency on internal procedures and can lay the groundwork for regulatory interventions and clarifications.

Additionally, the Board pointed out that where a platform fails to act on an ODS body determining that content is illegal, it is arguable that the platform can no longer rely on the liability exemption set out in Article 6(1) of the DSA.

Systemic risk arising from the failure to implement ODS decisions

The Board concluded that systematic non-implementation of ODS decisions can constitute a systemic risk under the DSA, and emphasised that this is where the mechanism acquires enforceability under Articles 34 and 35 of the DSA.

The Board noted that ODS bodies intervene in almost every listed category of risk under Article 34 of the DSA, from human dignity to the protection of minors and freedom of expression.⁴ Article 34(2)(b) and (c) of the DSA state that shortcomings in platforms' content moderation systems and their enforcement of terms and conditions are to be factored into the systemic risk assessment. Furthermore, the Board underlined the explicit link between Article 21-practice and the systemic risk framework supplied by Article 35(1)(g) of the DSA,

¹ The Board discussed the implications of insufficient platform submissions or Statements of Reasons in its [first discussion report](#).

² The Board recommended regular transparency reports and providing researchers access to case data in its [fourth discussion report](#).

³ See, for example, the Board's framework on content moderation decisions related to false information in its [third discussion report](#).

⁴ In its [second discussion report](#), the Board considered the role of fundamental rights in ODS proceedings.

which names initiating or adjusting the implementation of ODS decisions as a mitigation measure. The Board found that systematic failure to work with ODS bodies can therefore correspond to a systemic risk to the listed rights, particularly where this is corroborated by additional data.

Furthermore, the Board noted that the systematic and unreasoned non-implementation of decisions constitutes a systemic risk in itself: The fact that Article 35(1) refers to both trusted flaggers and ODS bodies implies that these are considered essential to the functioning of the DSA.

However, the Board emphasised the categorical differences between the different case scenarios processed by ODS bodies. It drew a first distinction between ‘complaint’ cases, where a user seeks the restoration of their own content or account, and ‘report’ cases, where a user has reported third-party content. While the complaint rate speaks to the remediability of harms to freedom of expression under Article 34(1)(b), the report rate speaks to other protected rights under Article 34(1)(b) such as privacy, the dissemination of illegal content under Article 34(1)(a), and to the effectiveness of content moderation under Article 34(2)(b). The second distinction is between account-level and content-level measures, in which different legally protected interests may be affected to varying degrees.

The Board further emphasised the importance of good faith cooperation and the necessity for platforms to provide sufficiently substantiated feedback across all stages of the ODS process: remediability can only be measured where a decision exists. If a platform’s conduct prevents a decision from being reached, no indicator is generated, and the harm is neither remedied nor recorded. The Board therefore noted that if data indicates platforms systematically refusing to engage substantially in the ODS process, this constitutes a particularly serious indication of systemic risk.

The Board also noted that the European Commission is directly responsible for the regulatory supervision of systemic risks under Articles 34 and 35 of the DSA. The Board called on the Commission to create concrete guidance on the minimum level of response required from platforms.

Regarding the practical enforcement of user rights and in relation to very large online platforms, the Board noted that the ODS mechanism is the most accessible form of individual redress that is independent of platforms. As the Commission has not yet established a route for individual concerns, a user who cannot obtain redress from an ODS decision is left with civil proceedings alone.

The Board concluded that it is in the best interests of platforms to implement well-reasoned ODS decisions. Otherwise, they risk loss of the liability exemption in specific cases, and more broadly exposure to investigations and fines – an argument that carries added weight ahead of the DSA’s evaluation in 2027.

SUBMISSIONS RECEIVED

[Hannah Hafenscher](#), a doctoral candidate at the Department of Innovation and Digitalisation in Law at the University of Vienna, writing in an individual academic capacity, has submitted that the good faith obligation in Article 21(2) DSA must extend into the implementation phase. Her argument rests on the wording: the obligation is to engage “with a view to resolving the dispute”, which is directed at the outcome rather than at the formal completion of a procedure, so a closure the platform refuses to act on leaves the dispute unresolved. She locates the non-binding character in the rule-of-law objection raised against the draft provision, namely that it risked establishing private quasi-courts, and argues that a concession made for that narrow purpose cannot be read as a licence to disregard well-reasoned decisions. The systematic context is said to confirm this, since Article 24(1)(a) DSA treats implementation as a discrete reportable variable, which presupposes regulated conduct rather than free choice. She derives a duty to inform from Article 21(2) as it stands, while noting that an express provision would be preferable, and sets out the minimum content such information should have. On mere disagreement, she argues that accepting it as a sufficient ground would reduce Article 21 to a duplicate of the internal mechanism under Article 20 DSA and destroy the independence that defines it. On systemic risk, she treats a well-reasoned decision as the instrument that brings an algorithmic defect to light, and argues that Articles 35(1)(g) and 35(1)(d) will generally have to be combined.

[ISD Germany](#) state in their submission that meaningful risk assessment under the DSA requires clear and differentiated indicators, and that implementation rates should therefore be disaggregated rather than reported as a single figure. Drawing on the framework for the identification, assessment and mitigation of systemic risks that the organization prepared for the Bundesnetzagentur, the authors identify remedia-

bility — the extent to which the original condition can be restored — as an important aspect of operationalising impact, and treats institutional and legal remedies such as out-of-court settlement as relevant components of that assessment. Its central recommendation is to distinguish a complaint implementation rate from a report implementation rate, since complaint cases address the rights of uploaders while report cases address the rights of reporters seeking restrictions on content posted by others. On that basis the complaint rate may serve as an indicator of the remediability of harms to freedom of expression under Article 34(1)(b) and of the effectiveness of the mitigation measure under Article 35(1)(g), while the report rate speaks to the dissemination of illegal content under Article 34(1)(a) and to the risk factors in Articles 34(2)(b) and (c). It further suggests separating account-level from content-level disputes. ISD Germany cautions that implementation rates must be interpreted carefully: because decisions are non-binding and Article 35 lists measures non-exhaustively, a low rate is not in itself a potential violation, and platforms may have legitimate grounds where a recommendation lacks clear reasoning. Where a provider claims implementation significantly reduces systemic risks while exhibiting a low rate, it argues enforcement authorities should apply heightened scrutiny.

[Avant-Garde Lawyers](#), a France-based non-profit working on artistic freedom, has submitted that where an ODS body repeatedly finds a platform’s decisions unfounded but the platform rarely implements those decisions, this may indicate a systemic problem in its moderation and redress systems rather than a series of isolated errors. Its distinctive contribution is a chilling-effect argument grounded in casework: artists have little incentive to bring disputes knowing that decisions are non-binding and frequently unimplemented, and resort to self-censorship instead, fearing

shadowbanning, further removals or account-wide restrictions. The consequence is that the very data which would document systemic over-moderation of artistic expression is never generated, so the harm remains both unremedied and invisible. AGL notes that artistic expression is particularly vulnerable to algorithmic misclassification, since nudity, satire and depictions of violence are routinely flagged without regard to artistic context, and that freedom of artistic expression is protected under Articles 11 and 13 of the Charter and Article 10 ECHR, which the European Court of Human Rights has held attracts a high level of protection. It reports having filed a complaint with Digital Services Coordinators in June 2026 on behalf of the artist Emma Shapiro, alleging breaches of Articles 14, 17 and 20 DSA after Meta terminated the account associated with her project on a generic account integrity rationale. It recommends that platforms inform both the user and the ODS body whether a decision has been implemented and give specific reasons where it has not, and that aggregated data be granular enough for recurring patterns to be identified.

[Appeals Centre Europe](#), a certified ODS body, has submitted that its own caseload can be used both to mitigate systemic risks and to identify them. It received approximately 24,000 disputes between April 2025 and March 2026 and has chosen to focus its submission on hate speech, where it has issued more than 1,400 decisions on content left up by platforms after being reported. It overturned the platform's decision in 70% of those cases, yet understands that the vast majority of that content remains online: because the content is not removed, the likelihood of recurrence increases, scaling the dataset and perpetuating the associated risks. The foreseeable negative effects it identifies include the dissemination of illegal content, infringement of fundamental rights, interference with civic discourse and electoral processes, gender-based violence, endangerment of public health and serious consequences for users' physical and mental well-being.

On content moderation systems it identifies three recurring risk factors: insufficient contextualisation of decisions, a lack of human moderation or linguistic expertise, and the manipulation of automated detection by bad actors, for example by substituting characters in slur terms with symbols borrowed from other alphabets. It separately flags the obfuscation of information about the right to out-of-court dispute settlement as systemic, engaging Articles 21(1), 20(5), 16(5), 17(f) and 25(1) DSA. Its central legal point is that while individual decisions are non-binding, systematic non-implementation cannot be considered compliance with Article 21, and it is a misstatement to treat collective non-implementation as evidence of compliance.

[IH21 – Digitálny ombudsman](#), certified by the Slovak Digital Services Coordinator in May 2026, has submitted from the perspective of a newly certified body building its caseload, on the view that the practices consolidating now at the implementation stage will determine whether the mechanism scales. It argues that the good faith obligation extends to implementation, relying on the legislative history: bindingness was removed from the Commission proposal while the good faith obligation was deliberately retained as its counterweight. The obligation, on this view, entails a procedural duty to respond and a substantive presumption in favour of implementing well-reasoned decisions, rebuttable only on compelling dispute-specific grounds. It sets out minimum content and timing for implementation feedback, in structured machine-readable form referencing the case identifier, and argues this is not a new burden but the case-level correlate of the existing obligation in Article 24(1)(a) DSA. It identifies three narrow legitimate grounds for refusal — manifest error of fact or law, conflict with a binding legal obligation, and material facts that could not have been raised — and argues that invoking the non-binding character is not itself a ground, since it describes the legal effect of a decision rather than a reason against following it. As a body working in Czech and Slovak it underlines Article

34(2), final subparagraph, and the role of ODS bodies as one of the few external quality checks in smaller language markets. It closes on sustainability: under Article 21(5) DSA the economics depend on users bringing disputes, and normalised non-implementation will erode demand.

[The Digital Trust & Safety Partnership ODS Working Group](#), whose members include Google, LinkedIn, Meta, Pinterest, Reddit, Snap, TikTok and Twitch, has submitted that it is premature to use implementation rates to measure the effectiveness of the system, because the enabling environment for a robust ODS system does not yet exist. It identifies three design challenges that must be addressed first. On market structure, it argues the system incentivises volume over quality: there is no meaningful materiality or standing threshold and no clear distinction between uploader and reporter complaints, which incentivises bodies to close cases without substantive decisions, noting that one body reports over 7,000 procedural default decisions, 72% of its total. On admissibility, it reports complaints that do not concern valid content moderation issues, such as behavioural or fraud-based enforcement or incidents involving bot networks or stolen accounts, warns that requiring disclosure of specific content in such cases could expose anti-fraud and child-safety detection logic, and argues that internal appeals should be concluded before a case is accepted. On scope, it notes that the eleven operating bodies are certified by eight different Coordinators with scope defined in four different ways, that platforms are not consulted in certification, and that requests for broad contextual related content lack a clear legal basis given that Articles 20 and 21(3)(d) DSA place the burden of substantiation on the complainant. It concludes that unactionable or poorly reasoned recommendations must be recognised as a legitimate factor in non-implementation.

[Fran Soza Martinez and Dirandra Sandyakala](#), Berlin-based journalists who co-run the cultural radio show

Woke-ish Talk and the media production platform Imaginary Box, have submitted as directly affected users, and describe a failure mode the call for submissions did not anticipate. On 29 May 2026 Meta suspended four of their accounts simultaneously, citing only an unspecified breach of its terms of service; a second email declaring the review complete arrived less than 90 minutes later, before any appeal or identity document had been submitted; the Instagram suspension screens cited only a linked Facebook account, identifying no Instagram content or policy; and the DSA-mandated route to dispute settlement information returned an error. Four disputes filed with User Rights were closed on 24 July 2026 for lack of jurisdiction, after Meta raised, for the first time and only in a private submission to the panel, the objection that the suspensions rested on its minimum-age eligibility rule rather than any content decision — a person-related fact outside Article 20 and 21 competence. They argue that this is an evasion pathway upstream of non-implementation, since preventing a decision produces the same outcome as ignoring one, and that raising an undisclosed and unverifiable objection instead of engaging with documented procedural failures is itself a failure of good faith. They recommend that any jurisdictional objection be disclosed to the user, with an opportunity to respond, before a case is closed on that basis.

[ADROIT](#), a certified ODS body based in Malta, has submitted that entering a dispute mechanism in good faith implies a duty to give the resulting non-binding decision genuine and objective consideration rather than dismissing it systematically. It argues that the legislator can hardly have created a redress mechanism which platforms are required to pay for but may otherwise ignore without consequence, and that the term out-of-court dispute settlement itself indicates an objective of remedying the situation that gave rise to the dispute; since Article 20 DSA already provides an internal appeals process, an additional independent procedure carrying no expectation of implementation would make

little sense. On its reading, decisions are non-binding only in the sense of not being directly enforceable through the ordinary courts, a limitation adopted because of constitutional concerns about establishing a parallel justice system. A failure to engage in good faith at implementation therefore constitutes a structural breach of Article 21(2) DSA, opening platforms to scrutiny and enforcement by Digital Services Coordinators and the Commission. It affirms a duty to inform: where a decision is implemented, the notice should specify the operational action taken and the timeframe; where it is refused, it should give a reasoned, specific explanation rather than a boilerplate refusal. It confines legitimate grounds for refusal to new verifiable evidence unavailable during the proceedings, a direct conflict with mandatory law, and severe technical or security impossibility. It calls on the Commission to define good faith implementation, including standardised response deadlines, and on Digital Services Coordinators to investigate systematic non-implementation as an ongoing infringement.

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