Károli Gáspár University of the Reformed
Church in Hungary- Doctoral School of Law
and Political Sciences

Ádám Liber

Data Protection and Platforms under the DSA

Theses of the Doctoral Dissertation

Head of Doctoral School:	Prof. Dr. Éva Jakab DSc., Professor Ordinarius
Thesis Supervisor:	Dr. habil. András Tóth PhD Head of Department, Associate Professor

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1. Outline of the Research Objective

The central research question of this thesis is how the new obligations introduced by the Digital Services Act (DSA)[1] affect the data processing practices of platforms – particularly very large online platforms (VLOPs) and very large online search engines (VLOSEs), which are subject to systemic risks—and how these new rules relate to the existing data protection framework of the European Union, including the General Data Protection Regulation[2] (GDPR) and the ePrivacy Directive.[3]

The aim of the research is to demonstrate that the DSA is not merely an additional regulatory layer, but constitutes a necessary legislative correction in the field of data protection. This correction responds to the enforcement failures of EU data protection law in the platform context, which have become apparent when confronted with the data-driven business models of global online platforms. The research is based on the hypothesis that the reactive, ex post sanctioning model of the GDPR has proven structurally inadequate to regulate platforms posing systemic risks. By contrast, the DSA introduces a proactive, *ex ante* system of obligations, focusing on the technical and design architecture of platforms, and specifically targeting those areas where EU data protection law has thus far been ineffective.

The research deliberately concentrates on the most critical points of intersection and interaction between the two regulatory regimes, with particular emphasis on the interrelationship between online surveillance, profiling, content aggregation, automated decision-making, the protection of users' fundamental rights – especially those of minors – and enforcement mechanisms.

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[1] Regulation (EU) No 2022/2065 of the European Parliament and of the Council of 19 October 2022 on the single market for digital services and amending Directive 2000/31/EC (the Digital Services Act), OJ L 277, 27.10.2022, p. 1; corrected by OJ L 3, 5.1.2023, p. 20.

[2] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

[3] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201, 31.7.2002, p. 37; Directive as amended by Directive 2006/24/EC (OJ L 105, 13.4.2006, p. 54); Directive 2009/136/EC (OJ L 337, 18.12.2009, p. 11).

2. Description of the Research, Investigation and Analysis Conducted, Methodology and its Sources

The research methodology rests on several pillars. The backbone of the thesis is a legal-dogmatic analysis, which examines the normative content of the relevant EU and Member State legislation (GDPR, ePrivacy Directive, DSA, Hungarian E-Commerce Act). This is complemented by a comparative method that identifies similarities, differences, and overlaps between the two regulatory regimes. Given the novelty of the topic, a critical-analytical approach to recent administrative and judicial practice plays a central role, enriching the thesis with a case-law-oriented perspective. This methodological triad enables the work to go beyond descriptive analysis, allowing for evaluative conclusions and well-founded recommendations.

The dissertation is structured into *four main sections*, progressing from the general (theoretical and legal background) to the specific (new rules and their practical challenges), and concluding with applied proposals for reform. The thesis is therefore not limited to theoretical inquiry, but is practice-oriented; the analysis is supported by numerous practical examples and case studies, making the conclusions and proposals concrete and actionable.

The *first part* of the thesis outlines the fundamental problems associated with data processing on digital platforms and the corresponding need for regulatory intervention. The *second part* diagnoses the shortcomings of the GDPR's principle-based enforcement model in the platform ecosystem, exposing the structural tensions that have contributed to implementation failures. The *third part* systematically analyses the DSA's new obligations with data protection relevance, demonstrating how they function as a corrective mechanism. The *final part* addresses the practical aspects of implementing both the EU data protection regime and the DSA, comparing supervisory models and highlighting the imperative of institutional cooperation, before synthesising the findings and presenting concrete policy recommendations.

The research is based on a wide range of sources, including relevant EU and national legislation (in particular the GDPR, the ePrivacy Directive and the DSA), relevant judgments of the Court of Justice of the European Union and national courts, guidelines and decisions of European and

national data protection, competition authorities and digital service coordinators, as well as the latest international and national legal literature.

3. Thesis Summary of New Scientific Findings

The novel findings and recommendations of this thesis can be summarised as follows:

- ***First Thesis:*** **The DSA implements corrections to EU data protection law**

The thesis demonstrates that the DSA functions not merely as a *lex specialis* to the EU data protection regime, but as a systemic regulatory correction that offers ex-ante, architectural responses to the implementation failures of EU data protection law in the platform context. This interpretative framework provides a novel and deeper understanding of the relationship between the two regimes. The DSA's concrete, ex-ante obligations (e.g. risk assessments, interface design rules) render the GDPR's abstract, principle-based approach (e.g. privacy by design, accountability) more controllable and enforceable within the platform ecosystem. In this sense, the DSA addresses the implementation deficits of the data protection regime as a form of legislative remedy. The DSA answers the „how", while the GDPR defines the „what": for example, the option to use a non-profiling-based recommendation system under Article 38 DSA constitutes a concrete technical implementation of the privacy-by-design obligation under Article 25 GDPR; the prohibition of dark patterns in Article 25 DSA serves as an architectural precondition for the validity of freely given and informed consent under the GDPR. The thesis further explains how specific provisions of the DSA - such as the prohibition of dark patterns (Article 25), enhanced protections for minors (Article 28), and data access for vetted researchers (Article 40)—serve as concrete guarantees for the practical realisation of rights granted by the GDPR (e.g. valid consent, special protection for vulnerable groups). The research shows that in these domains, the DSA not only complements but also operationalises the GDPR's general principles and offers concrete solutions to persistent implementation challenges, particularly in areas where platforms have systematically undermined the effective application of data protection rules.

- ***Second Thesis:*** **Tracing the regulatory turn towards design-based governance**

The thesis identifies a paradigm shift in EU digital regulation: a shift from the reactive „conduct-based" model of the GDPR, based on ex-post sanctions and individual data processing operations, to the proactive „design-based" regulatory logic of the DSA, focusing on the design decisions and internal processes of platforms, which shifts the regulatory focus from the „behaviour" of platforms to their internal operational architecture.

This thesis builds on the fundamental difference between the regulatory philosophy of the EU data protection regime and the DSA: they not only regulate different areas but also differ in the depth and logic of regulatory intervention, indicating a conscious regulatory evolution, an „architectural turn". The enforcement model of EU data protection law relies on ex-post controls and fines that have not materially changed the data-driven business models of platforms, as they have addressed the symptoms of breaches, not the architectural causes. The paper points out that this „conduct-based" approach to global online platforms has led to a regulatory crisis and enforcement failure. By contrast, the DSA requires systemic risk assessment, transparency of user interfaces and recommender systems, a prohibition on dark patterns, and independent audits, thus enforcing accountability at the design stage. This „architectural turn" is a corrective step in the implementation of EU data protection law, which focuses on upfront risk management and internalisation of platform operations, rather than on sanctions, providing more effective tools to prevent and address systemic privacy problems.

- ***Third Thesis:*** **The DSA provisions constrain and take precedence over expansive interpretations of the GDPR's flexible legal bases**

My thesis demonstrates that DSA has an indirect but significant impact on the use of legal bases for data processing by platforms, by reshaping their conditions of application. The DSA, through its absolute prohibitions on targeted advertising (Articles 26 and 28 DSA), overrides the expansive interpretation of the GDPR's flexible legal bases (in particular, consent, contract and legitimate interest) in the platform context. With these *per se* unlawfulness findings, the legislator sets clear, non-discretionary limits to profiling, removing the legal ambiguities that platforms have previously used to justify extensive data collection. In doing so, the DSA establishes clear,

horizontal rules, rather than complex, case-by-case balancing of interests, significantly limiting the scope for platforms to monetise data based on special categories of data and targeting minors. As a new finding, I also highlight that platforms have in many cases relied on legitimate interest legal bases to handle user data - but the greater transparency and user control (e.g. the ability to set a feed algorithm) required by the DSA significantly narrows the scope for legitimate data processing in this area and prevents platforms from systematically further eroding the application of data protection legal bases.

- ***Fourth Thesis*: Rethinking fairness: substantive fairness as a new benchmark for assessing platforms' data processing practices**

The thesis demonstrates, as a novel academic contribution, that the principle of „fairness" under Article 5(1)(a) GDPR, in the context of platform ecosystems, should be interpreted in a dual dimension—both procedural and substantive. It identifies a regulatory paradox: platforms are often able to create an appearance of procedural fairness through legally complex but formally compliant disclosures and consent mechanisms, while the core of their business model—mass surveillance and manipulative influence over user behaviour—remains substantively unfair. The novelty of the thesis lies in the development of an interdisciplinary model to define the content of substantive fairness. It integrates principles from consumer protection law (e.g. the prohibition of unfair commercial practices) and competition law (e.g. the prohibition of abuse of dominant position) into the framework of data protection law. This approach redefines the fairness principle as a comprehensive normative standard, enabling supervisory authorities to assess not only formal legal compliance, but also the actual impact of data processing on users.

- ***Fifth Thesis:* Exploring enforcement synergies**

The paper details how certain provisions of the DSA (e.g. the advertising repository, the prohibition on dark patterns, and systemic risk assessments) create new evidentiary tools and enforcement opportunities for data protection authorities (DPAs) to implement the EU data protection regime. The DSA operationalises the GDPR's abstract accountability principle (Article 5(2) GDPR) by introducing concrete, externally verifiable obligations for VLOP/VLOSE providers, such as

systemic risk assessments (Article 34), public advertising repositories (Article 39), and researcher access (Article 40). The public information generated through the DSA's transparency obligations can serve as direct evidence in DPA investigations, while risk assessments may function as a form of self-reporting, revealing systemic breaches. These mechanisms contribute to an ecosystem enabling DPAs and civil society to uncover opaque data practices and their associated systemic risks, thereby giving practical effect to the GDPR's accountability requirement.

- ***Sixt Thesis:*** **A model of the duty of loyal cooperation in the field of digital services**

The supervisory regime under the DSA and the GDPR—dividing responsibilities between Digital Services Coordinators (DSCs) and data protection authorities (DPAs)—appears fragmented. Read in light of the EU-law principle of sincere (loyal) cooperation (Article 4(3) TEU) and the Court of Justice's judgment in Case C-252/21, Meta Platforms v Bundeskartellamt, it requires convergence of regulatory logics. Building on Meta/Bundeskartellamt, this thesis develops a model for the duty of sincere cooperation among digital supervisory authorities (DPAs and DSCs). Given the complexity of the digital ecosystem, cooperation is not merely a professional norm but a legal obligation under EU law, necessary to prevent regulatory fragmentation and to ensure coherent application of the law. Accordingly, DSCs should factor compliance with EU data-protection law into their assessment of systemic risks under the DSA, while DPAs should rely on evidence generated under the DSA when enforcing the GDPR „ thus synthesising proactive, system-level oversight with rights-based data protection. The thesis further argues for an institutionalised inter-authority cooperation mechanism – absent from the DSA – to make this obligation effective: national DPAs and DSCs should meet regularly, coordinate investigations, conduct joint inspections, and notify one another in overlapping cases to ensure consistent enforcement.

4. Full List of Publications

Publications related to the subject of my doctoral thesis (works registered in MTMT)

- Liber, Ádám – Bereczki, Tamás (2024): Adatvédelem és platformok a DSA tükrében. Research report commissioned by the NMHH (National Media and Infocommunications

Authority) – published on the Online Platforms website (42 pages). The study provides a comprehensive analysis of the combined application of the Digital Services Act and EU data protection rules, forming the basis for the main findings of this doctoral dissertation.

- Liber, A., Albert, L., & Firniksz, J. (2023). Hungary. In Antitrust in Data Driven Markets & Legal Framework for Influencers, Native Advertising and Control over the Use of AI in Marketing (pp. 443–457). http://doi.org/10.1007/978-3-031-07422-6_16
- Firniksz, Judit; Mezei, Péter; Liber, Ádám, Hungary - In: Kilpatrick, Bruce; Kobel, Pierre; Këllezi, Pranvera (Ed.) Antitrust in Data Driven Markets & Legal Framework for Influencers, Native Advertising and Control over the Use of AI in Marketing; Cham, Switzerland: Springer International Publishing (2023) pp. 171-198. Paper: Chapter 7, 28 p.
- Determann adatvédelmi jogi útmutatója – Nemzetközi vállalati compliance (book translation, in cooperation with Tamás Bereczki) –, HVG Orac, 2020; https://orac.hu/Determann_adatvedelmi_utmutatoja
- Liber, Ádám, Bereczki, Tamás: Közreműködők adatvédelmi jogállása (Jogtudományi Közlöny, 2019/12., 506-510. o.); https://szakcikkadatbazis.hu/doc/7422225
- Papp, Álmos; Horváth, András; Liber, Ádám - Hungary: Anti-trust Analysis of Online Sales Platforms; In: Kilpatrick, Bruce; Kobel, Pierre; Këllezi, Pranvera (Ed.) Antitrust Analysis of Online Sales Platforms & Copyright Limitations and Exceptions; Cham, Switzerland: Springer International Publishing (2018) pp. 187-214. Paper: Chapter 8 , 28 p.
- Liber, Ádám; A jogos érdeken alapuló adatkezelésről - INFOKOMMUNIKÁCIÓ ÉS JOG 2012. (9. évf.): No. 49. pp. 79-88., 10 p. (2012)
- Liber, Ádám; Közvetítő szolgáltatók felelőssége szellemi tulajdon megsértéséért az Európai Unióban, in Iparjogvédelmi és Szerzői Jogi Szemle, June 2013., pp. 5-42. http://www.sztnh.gov.hu/kiadv/ipsz/201303-pdf/01.pdf

Publication approved for publication:

- Liber, Ádám – Bereczki, Tamás: Zárt profilok előnyei – mi történik a képeimmel, miután feltöltöttem őket?; NMHH, Online platform főosztály, onlineplatfromok.hu, pp. 1-89., expected publication: Autumn 2025

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- Halász, B., Liber, Á., Arányi, D., Nagy, F. & Németh, O. (2024). Sustainability and Intellectual Property in Hungary. In B. Kilpatrick, P. Kobel & P. Këllezi (Ed.), Sustainability Objectives in Competition and Intellectual Property Law (pp. 307-322). Springer Nature Switzerland.
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- Liber, Á. (2010). A tisztességes eljárás védelme - a belső visszaélés - jelentés hazai szabályozása. Gazdaság és Jog, 18(4), pp. 3-9.
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- Managing third-party risks under EU data protection, cybersecurity laws - https://iapp.org/news/a/managing-third-party-risks-under-eu-data-protection-cybersecurity-laws/; 17 October 2024.
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- Personal data protection blog: www.dataprivacy.hu