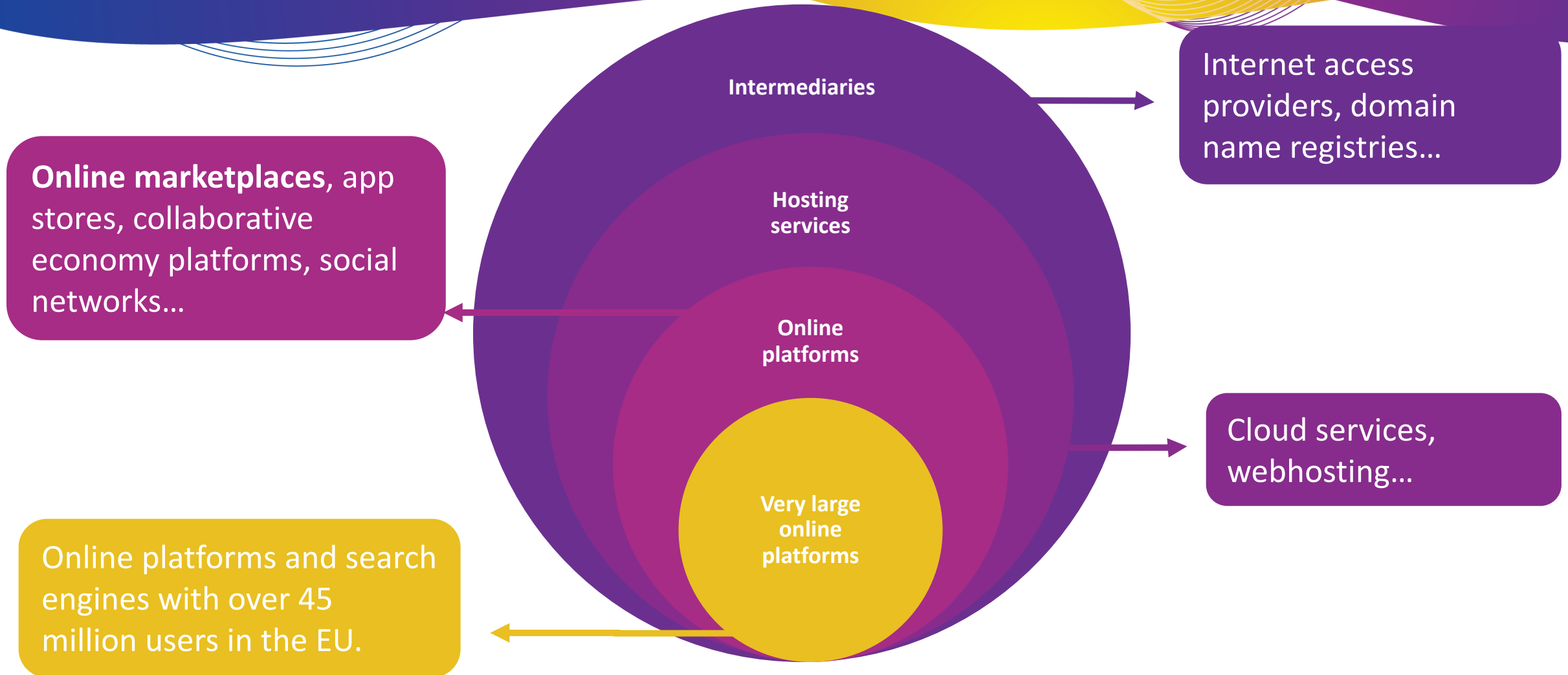


The Digital Services Act

DSA ENFORCEMENT

More obligations for very large platforms



Reminder

	VERY LARGE PLATFORMS	ONLINE PLATFORMS	HOSTING SERVICES	ALL INTERMEDIARIES
Transparency reporting	•	•	•	•
T&Cs	•	•	•	•
Cooperation with national authorities	•	•	•	•
Points of contact & legal representatives	•	•	•	•
N&A	•	•	•	
Reporting criminal offences	•	•	•	
Complaint & redress mechanisms, OOC dispute settlement	•	•		
Trusted flaggers	•	•		
Prohibition of Dark Patterns	•	•		
Measures against abusive notices	•	•		
Special obligations for marketplaces (e.g. KYBC, random checks)	•	•		
Bans on targeted ads to children and based on special categories of personal data	•	•		
Accessibility	•	•		
Transparency of recommender systems	•	•		
Advertising transparency	•	•		
Risk management	•			
Independent audits	•			
User can opt out of profiling	•			
Data sharing with authorities & researchers	•			
Codes of conduct	•			
Crisis response cooperation	•			

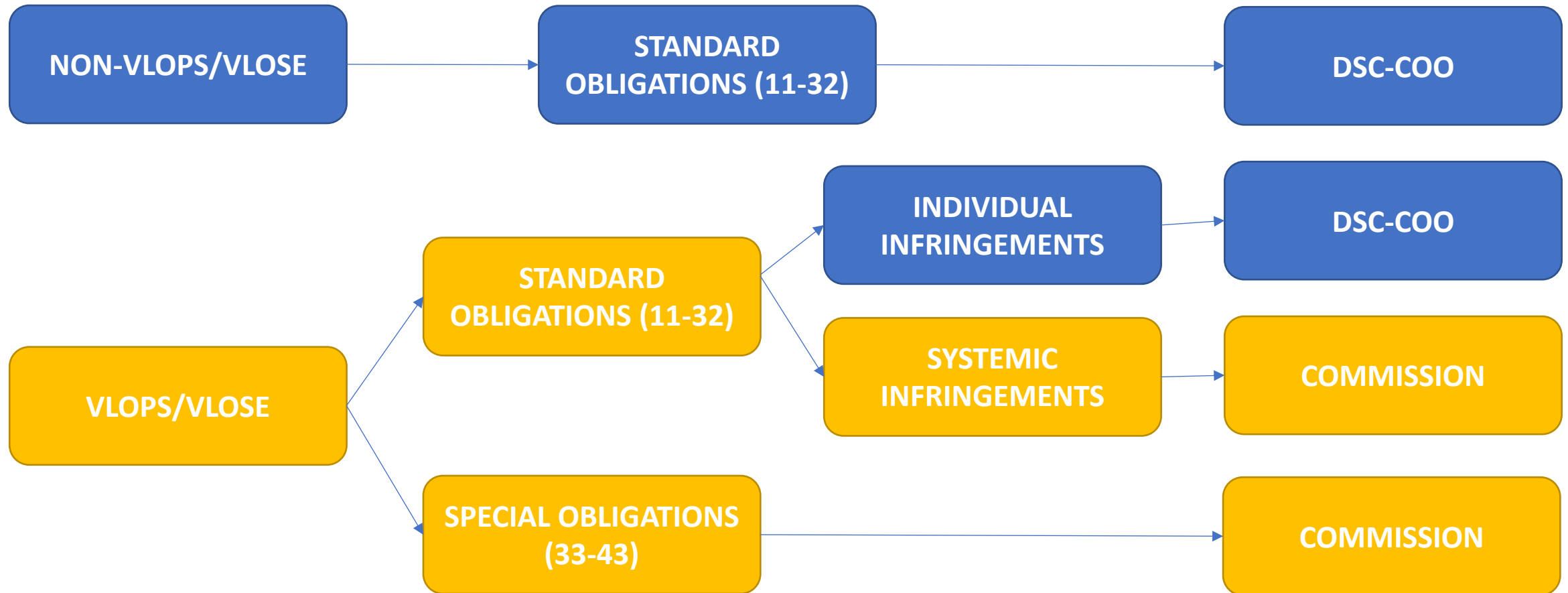
Who is the DSA enforcer?

It will depend on

- a) Who is the infringer (VLOP/VLOSE or others)
- b) What obligations are violated (special obligations or standard obligations)
- c) What is the significance of the violation (systemic or non-systemic)



Who is the DSA enforcer?



Appointment and role of DSC

Article 49/recitals 109-110

- Member States must designate their national Digital Services Coordinators by 17 February 2024 (Art. 49(3) DSA)
- Digital Services Coordinators are responsible for the supervision and enforcement of the Regulation vis-à-vis providers established in their territory (see division of competences with Commission in Art. 56 DSA)
- Other authorities can be appointed as Competent Authorities (CAs) (eg. for specific sectors)



DSC's Tasks

Digital Service Coordinators are responsible for all intermediary services/issues covered by DSA, unless other CA is explicitly appointed for specific tasks/sectors

DSC Tasks

- Administrative tasks
- National coordination
- Cross-border coordination
- European coordination



Requirements for DSCs/CAs

DSCs & CAs must



Have all necessary **resources** (technical, financial, human) to adequately exercise their supervisory role.

- Member States must consider the **size, complexity and impact** of the intermediary service providers falling within their competence



Have **autonomy** in managing their budget



Act with **complete independence** (e.g. no instructions from governments)

It is still possible subject them to proportionate accountability mechanisms, judicial review and exchanges of views with other authorities.

Powers of DSCs/CAs



Investigatory Powers

For instance, the power to carry out inspections, power to require providers to give information/explanations, etc.

Enforcement Powers

For example, the power to impose fines, adopt interim measures, etc.

Under strict conditions, the power to request a judicial authority to restrict access of recipients of services to the service concerned.



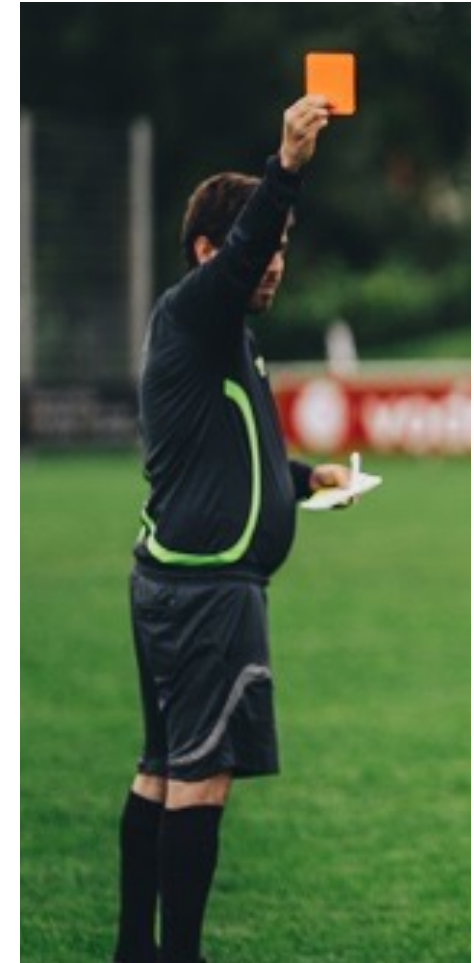
The **conditions** and **limits** of the investigatory and enforcement powers must be set out in national law, in accordance with the Charter, the DSA and other Union Law.

Penalties

- Penalties must be **effective**, **proportionate** and **disuassive**.
- They must be **notified to the Commission**.

Factors to consider

- Nature
 - gravity
 - recurrence
 - duration
 - systemic nature of infringement
 - number of recipients affected
 - intention/negligence of provider
- Penalties for failure to comply with a DSA obligation can be **up to 6% of annual worldwide turnover of provider**.
 - There can be additional penalties for incorrect, incomplete or misleading information/non-submission to an inspection, as well as periodic penalties



Competences of Commission and National authorities

- Regulates the allocation of competences of authorities
 - Horizontally - Between Member States
 - Vertically - Between Commission and national authorities
- Regulates **only public enforcement** of DSA obligations
- Private enforcement related to DSA obligations (e.g. compensation claims under Article 54) subject to general private international law rules
- Competence to issue orders to remove illegal content or provide information (Articles 9 and 10) are not regulated by DSA

Basic principles for all intermediaries

Country of origin

Providers established in the EU

- Enforcement by DSCs and Competent authorities in the Member State where the main establishment of the provider is located (Article 56(1) and recital 123)
- No derogations, but cooperation mechanisms available

Third-country providers without establishment in the EU

- Country of origin is where the Legal Representative (Art.13) resides or is established
- Enforcement by that country's national authorities.

Third-country providers without legal representative

(e.g. in breach of Article 13)

- Any authority in the EU can start an infringement, but others are prevented to start another infringement for the same conduct

Cooperation

- Cooperation tools:
 - mutual assistance
 - joint investigations
 - cross-border cooperation system requests
 - Referral to COM
 - Information Sharing System (Article 85)
- Rules on cooperation mechanisms addressed to MS authorities (possible to launch infringements against MS in case of failure to comply with them)
- Applicable to all enforcement actions managed by DSCs/Competent Authorities (specific arrangements may apply for VLOPs/VLOSEs when COM initiate proceedings, Articles 65-66)



Mutual assistance

DSCs and COM **obliged to cooperate and support each other:**

1. DSC informs other DSCs/Board/COM about opening infringements and intentions to take a final decisions
2. DSCs have to help other DSC-COO investigating a given infringement by:
 - Providing specific information
 - Investigating information located in their country
 - Reply within 2 months
 - Refusal to be justified
 - Platform to comply with DSCs investigatory measures, otherwise they may be sanctioned by that DSC (Recital 127)



Cross-border cooperation requests

Request by DSC
in country of destination
(COD) (ex. SE)



Request by the Board,
solicited by at least
3 DSCs-COD
Board takes decision
by majority



**Substantial
evidence showing
negative impact
on collective
interest of
recipients or
negative societal
impact**
(Article 58(3) and
recital 128)

Within 2
months
DSC-COO
(ex. CZ)
has to:

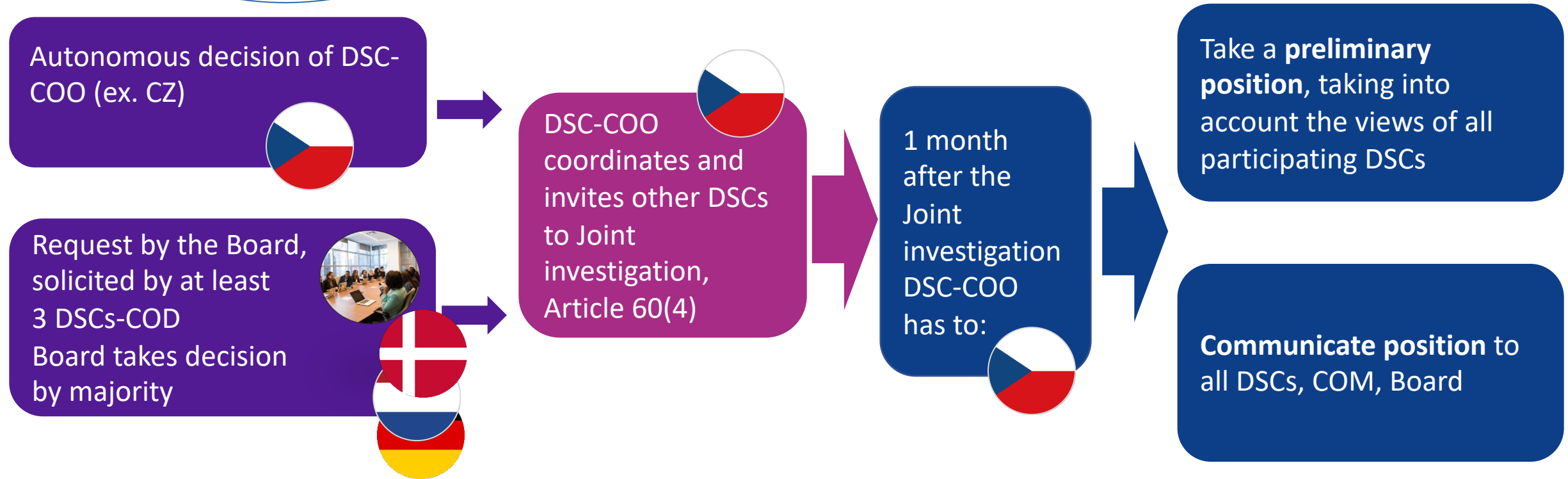


Investigate the issue
(eventually triggering
mutual assistance/Joint
Investigation)

Assess (including
indicating any investigatory
and enforcement
measures taken or
envisaged)

In case of VLOPs/VLOSEs:
possible to ask COM to act
(Recital 128 and Article 65)

Joint investigations by DSCs



Referral to the Commission

The Board can decide to launch cross-border cooperation requests or joint investigations if

- DSC-COO does not act
- Board disagrees with the assessment of DSC-COO



Within 2 months
Commission
has to:



Consult DSC-COO

Assess the matter

If DSC-COO action
considered insufficient:
request to review the
matter



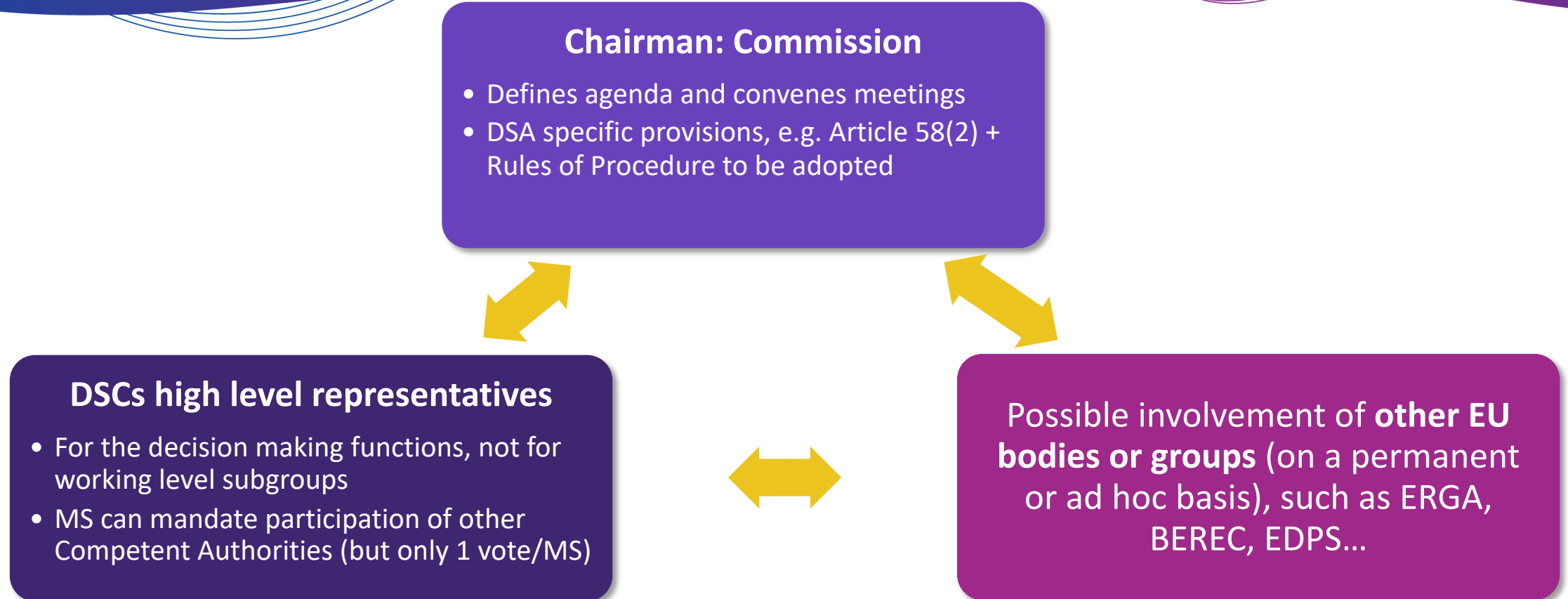
DSC-COO to inform
COM/Board (and
requesting DSC if
relevant) about the
measures taken or
envisaged within 2
months

European Board for Digital Services: Functions and nature

- The Board is an ad hoc '**independent advisory group**'
 - **Ad hoc**: regulated directly in legislation
 - **Independent**: composed by independent national authorities, not by representatives of national governments (unlike Expert Groups/Committee)
 - **Advisory**: no binding powers, but advisory, coordination of expertise and triggering functions
 - **Group**: bringing together the collective position at EU level of national regulatory community
- No legal personality
 - No staff nor budget
 - Secretariat provided by the Commission



European Board for Digital Services: Structure



Operative as from 17 February 2024

General framework and principles for Commission's powers

Initiation of proceeding and cooperation,

- Avoid duplication of work
- DSCs and Board to provide information and cooperate

Monitoring

Enables Commission to take measures to ensure effective compliance

Publication of decisions



Investigatory powers

Requests for information

Simple request for information

Request for information by decision

Obligation to provide accurate and correct information (and reply in case of decision)

Power to take interviews

Facultative tool = no obligation to submit to an interview

Inspections

Announced and unannounced "surprise inspections"

Can be assisted by DSCs and Competent Authorities

May require judicial authorisation



Enforcement powers

Interim measures

- Interim measure, i.e. exceptional circumstances, risk of irreparable damage

Commitments

- Commitments decision

Non-compliance

Non-compliance proceedings

- Breach of DSA
- Breach of interim measures or commitments decision



Enforcement powers

Fines

- Possibility to impose a fine in case of breach of substantive (6%) and procedural (1%) obligations

Periodic penalty payment

Limitation period for the imposition of penalties

Limitation period for the enforcement of penalties



Thank You