Infringement proceedings against six EU member states for their failure to designate digital services coordinators

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On 25 July 2024, the European Commission sent a letter of formal notice to Belgium, Croatia, Luxembourg, the Netherlands, Spain and Sweden, indicating their failure to comply with the Digital Services Act (DSA). These member states had failed to designate or afford the necessary powers to their Digital Services Coordinators (DSCs) – national competent authorities responsible for the supervision of providers of intermediary services and enforcement of the DSA. The deadline for the designation of DSCs passed on 17 February 2024.

The responsibility for monitoring the application and implementation of the DSA is shared between the member states and the Commission. The latter is authorised to supervise and enforce the DSA against providers of very large online platforms (VLOPs) and very large online search engines (VLOSEs). DSCs must enjoy far-reaching investigative and enforcement powers against all other providers of intermediary services whose main establishment is located in the member state in question, including the powers to handle complaints from recipients of digital services and to impose sanctions in the event of non-compliance. Member states may designate one or several competent authorities in addition to the DSC, but must provide a clear division of tasks between those authorities and the DSC, as well as ensuring their close and effective collaboration.

Of all six member states who received the Commission's letter, Belgium is the only member state that has yet to designate its DSCs. The delay occurred due to the specifics of the Belgian division of powers (since the designation of the DSC requires the conclusion of a cooperation agreement between the Federal State and the Communities) as well as the parliamentary summer recess. Other member states have not yet granted their DSCs sufficient powers and competences. For example, the Netherlands has provisionally designated the Authority for Consumers and Markets (*Autoriteit Consument & Markt* – ACM) as its DSC. It will share the supervision and enforcement tasks with the Authority for Personal Data (*Autoriteit Persoonsgegevens* – AP). However, the ACM has not been given some of the powers listed under the DSA, including the authority to certify out-of-court dispute settlement bodies or to afford the status of "trusted flaggers" to independent entities responsible for detecting, identifying, and reporting illegal content.

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In April 2024, the Commission had already sent letters of formal notice to six member states, namely Czechia, Cyprus, Estonia, Poland, Portugal and Slovakia, where considerable delays in the designation or empowerment of the DSCs were anticipated. In the meantime, Estonia and Slovakia have taken the necessary steps to ensure compliance with the DSA.

Letters of formal notice constitute the first step of infringement proceedings. The six member states who received those letters are now afforded two months to respond to the Commission's notice and comply with the DSA. Should the shortcomings remain unaddressed, the Commission may issue reasoned opinions. If the member states keep failing to ensure compliance with the DSA, proceedings before the Court of Justice of the EU (CJEU) can be initiated.

July infringement package: key decisions

https://ec.europa.eu/commission/presscorner/detail/EN/inf_24_3228

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