[NL] Digital Services Act Implementation Bill published

IRIS 2023-8:1/16

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The Digital Services Act Implementation Bill was published on 14 July 2023. It provides for the national implementation in the Netherlands of the EU's landmark Digital Services Act (DSA), which entered into force in late 2022 (see, for example, IRIS 2023-3:1/18 and IRIS 2023-5:1/2). Crucially, the Bill designates the *Autoriteit Consument & Markt* (Netherlands Authority for Consumers and Markets – ACM) as the national Digital Services Coordinator in the Netherlands under the DSA. In addition, the bill designates the *Autoriteit Persoonsgegevens (*Dutch Data Protection Authority – AP) as a further competent national authority, with competence to supervise certain rules under the DSA concerning advertising on online platforms, and advertising targeting children. Notably, the DSA provides under Article 49(3) that member states must designate national Digital Services Coordinators by 17 February 2024.

The purpose of the DSA is to contribute to the proper functioning of the internal market for "intermediary services", and sets out harmonised rules for a safe online environment. In this regard, it sets down a framework for the conditional exemption from liability of providers of intermediary services; and includes rules on specific due diligence obligations tailored to certain specific categories of providers of intermediary services, including online platforms. Further, the DSA also contains special rules for so-called Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs), which were designated by the European Commission in April 2023 (see IRIS 2023-5:1/2).

Under Article 49(1) of the DSA, member states must designate a competent authority as their Digital Services Coordinator. The Digital Services Coordinator is responsible for all matters relating to supervision and enforcement of the DSA in a member state, unless the member state concerned has assigned certain specific tasks or sectors to other competent authorities. The Digital Services Coordinator is also responsible for ensuring coordination at national level and for contributing to the effective and consistent supervision and enforcement of the DSA throughout the EU. As such, the Digital Services Act Implementation Bill designates the ACM as the Digital Services Coordinator in the Netherlands, pursuant to Article 49(2) DSA. The Bill also provides the ACM with various powers necessary under the DSA, including powers to impose administrative fines, requisition information, conduct inspections of business premises, and investigate cases. Finally, the bill also designates the AP as a further competent national authority to supervise two particular provisions under the DSA, namely Article

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26(3) DSA, which prohibits online platforms from presenting advertisements based on profiling using special categories of data; and Article 28(2) DSA, which prohibits platforms from presenting advertisements based on profiling “when they are aware with reasonable certainty that the recipient of the service is a minor”.

Wetsvoorstel tot uitvoering van de digitaledienstenverordening, 14 jullie 2023

https://www.internetconsultatie.nl/uitvoeringswetdsa/document/11605

Bill to implement the Digital Services Act, 14 July 2023

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