[LU] Digital Services Act Implementation Bill proposed to Parliament

IRIS 2023-10:1/24

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The Luxembourgish government agreed on a law for the implementation of the EU Digital Service Act (DSA) on 8 September 2023. Subsequently, under the responsibility of the Ministry of Economy, it deposited the bill with the *Chambre des députés* (Chamber of Deputies) on 14 September 2023. The bill proposes the provisions necessary in Luxembourgish law to implement the DSA concerning those parts of EU regulation that rely on additional national rules. The DSA establishes unified rules for a secure online environment to support the effective operation of the internal market for "intermediary services" and maintains the liability privileges for intermediaries while clarifying particular due diligence requirements for certain kinds of intermediary service providers, including online platforms. The DSA lays down stricter obligations for so-called Very Large Online Platforms (VLOPs) and Very Large Online Search Engines (VLOSEs), the first list of such providers having been designated by the European Commission on 25 April 2023 (see IRIS 2023-5:1/2). The statement on the objective of the bill points out that one of these is established in Luxembourg (Amazon), although it should be noted that this provider has challenged its designation before the General Court. In terms of national action to be taken, one of the main points is the designation of a Digital Services Coordinator (DSC), which has to take place and be notified to the European Commission by 17 February 2024 at the latest, the date on which the DSA becomes fully applicable. By that time the bill is also supposed to have been enacted and is due to take full effect on that day. The bill confirms the designation of the *Autorité de la concurrence* (competition authority) as the national DSC under Article 49 (1) DSA. The government had already taken this decision in principle on 3 February 2023 and argues that in light of the short deadline it took a “pragmatic approach” by choosing an already existing national authority, namely the one that is already in charge of monitoring the P2B Regulation and Digital Markets Act (DMA) rules, with the aim of facilitating a coherent application of the different rules concerning platforms. As the actual workload for the authority remains unclear in the view of the government – an internal assessment resulted in the assumption that around 250 platforms would fall under the monitoring remit of the Luxembourgish DSC – the bill suggests that changes might occur in the future after evaluation of the law following two years of its applicability. The bill is accompanied by an explanatory table detailing which provisions of the DSA are implemented by which provision of the bill and for which of the DSA provisions implementation is not necessary; explanations are given as

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to why the government does not see a need for action concerning these particular provisions. If the bill is adopted by the Chamber of Deputies as proposed, the competition authority will be responsible for ensuring the supervision and enforcement of all regulatory issues related to the DSA in Luxembourg. Therefore, the bill also includes the procedures required for the effective use of the powers and procedures inferred by Article 49, in accordance with Article 51 (6) DSA. It includes a provision guaranteeing the independence of the authority when acting as DSC. The explanations to the bill emphasise the fact that the competences of other existing national authorities charged with monitoring violations by platforms in specific areas, such as the supervisory authority for data protection or the law enforcement authorities for terrorist content or child sexual abuse material, remain untouched, but that the coordinating function will be the focus of the DSC. Chapter 3 of the bill details the power and procedures of the DSC, including the competence to receive and respond to complaints and the power to request information regarding non-compliance issues from the service provider. The inspection powers of the competition authority and competence to conduct interviews with relevant parties are detailed and the decision-making powers concerning issues of compliance are laid down. For the latter the internal procedures of the authority are also defined. Chapter 4 refers to the penalties that can be imposed on service providers found to be non-compliant, reflecting the requirement of Article 52 DSA. Subsequent Chapters of the bill set out the procedural rights of the providers under investigation including the allocation of jurisdiction to the Administrative Tribunal. Cooperation with other DSCs and with the European Commission as well as participation in the European Board for Media Services are all described in the bill. In addition to the introduction of these rules in a new law aimed at implementing the DSA, as a consequence of the inclusion of the liability privilege rules for intermediaries now in the DSA and therefore a directly binding regulation, the corresponding provisions in the Luxembourgish E-commerce law of 14 August 2000 have been deleted and the institutional provisions in the Competition Law of 30 November 2022 have been amended by the bill.

Projet de loi n° 8309

https://www.chd.lu/fr/dossier/8309

Le gislative procedure No. 8309

Projet de loi portant mise en œuvre du règlement (UE) 2022/2065 du Parlement européen et du Conseil du 19 octobre 2022 relatif à un marché unique des services numériques et modifiant la directive 2000/31/CE (règlement sur les services numériques) et portant modification de la loi modifiée du 14 août 2000 sur le commerce

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électronique et la loi modifiée du 30 novembre 2022 relative à la concurrence

https://wdocs-pub.chd.lu/docs/exped/0142/073/284731.pdf

Draft law implementing Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Regulation on digital services) and amending the amended Law of 14 August 2000 on electronic commerce and the amended Law of 30 November 2022 on competition

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