[NL] Netherlands Authority for Consumers and Markets publishes draft DSA guidance for providers of online services

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On 18 January 2024, the Netherlands Authority for Consumers and Markets (*Autoriteit Consument & Markt*) (ACM) published important draft Guidelines on the EU's landmark Digital Services Act (DSA) (see, for example, IRIS 2023-3/18 and IRIS 2023-5/2). Notably, this follows the ACM being designated as the national Digital Services Coordinator in the Netherlands under the DSA under recent Dutch legislation (IRIS 2023-8/16).

The draft Guidelines have been developed by the ACM to ensure that "market participants falling under the DSA are adequately prepared" for the DSA becoming directly applicable across the EU on 17 February 2024.

The 48-page Guidelines document is divided into several important sections, with guidance sections for (1) intermediary service providers, (2) hosting service providers, (3) online platform providers, and (4) B2C online marketplace providers. It primarily targets intermediary service providers that have their principal place of business in the Netherlands or whose legal representative resides or is established in the Netherlands, regardless of where the recipients who use these services are located.

Firstly, in relation to intermediary service providers, the Guidelines provide in-depth guidance on a range of important issues, including what the DSA requires under Article 14 DSA on terms and conditions, and notably, the form of terms and conditions "aimed at minors".

Secondly, for hosting service providers, the Guidelines aim to clarify the rules of Article 16 DSA' on implementing notice-and-action mechanisms and those of Article 17 on the obligation to provide a state of reasons for imposing restrictions due to illegal content.

Thirdly, in relation to online platform providers, the ACM provides guidance on key provisions of the DSA applicable to online platforms, including Article 22 DSA on trusted flaggers, whereby platforms must prioritise and promptly address notices of illegal content from trusted flaggers. The ACM clarifies that the DSA "does not

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preclude [platforms] from considering notices submitted by entities not granted trusted flagger status by a DSC similarly to those from trusted flaggers, or from collaborating with other entities". The Guidelines also cover the DSA's rules on internal complaint handling systems, out-of-court dispute resolution, the ban on dark patterns, transparency in advertising and recommender systems, and the protection of minors. Finally, the Guidelines provide additional guidance to B2C online marketplace providers, including on the issues of traceability of traders, and right to information for consumers.

As for future steps, a consultation on the draft Guidelines is open until 16th February 2024, after which the final Guidelines will be adopted.

Netherlands Authority for Consumers and Markets, Consultation version of DSA Guidelines: Due diligence obligations for digital services, 18 January 2024

https://www.acm.nl/system/files/documents/acm-publishes-for-consultation-the-draft-guidelines-regarding-the-dsa-for-providers-of-online-services.pdf

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