[NL] Minister provisionally designates Digital Services Coordinator

IRIS 2024-3:1/14

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On 11 February 2024, the Minister for Economic Affairs issued an important Ministerial Decision, "provisionally" designating the Autoriteit Consument & Markt (Netherlands Authority for Consumers and Markets – ACM) as the national Digital Services Coordinator in the Netherlands under the EU landmark Digital Services Act (DSA) (see, for example, IRIS 2023-3/18 and IRIS 2023-5/2).

Notably, the Dutch government published the Digital Services Act Implementation Bill in July 2023, which included provisions designating the ACM as the Digital Services Coordinator and designating 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 (see IRIS 2023-8/16).

And under Article 49(3) DSA, member states are required to designate national Digital Services Coordinators by 17 February 2024. However, as explained in the Decision, the bill is still making its way through Parliament and will not be in force by the deadline of 17 February 2024. As such, the Minister issued a Decision "provisionally" designating the ACM as the national Digital Services Coordinator.

Crucially, the designation is limited to only implementing certain parts of the DSA. These include provisions on receiving contact details of legal representatives established in the Netherlands of providers of intermediary services established outside the Union (Article 13(4) DSA. Further, under the designation, the ACM will function as a contact point for the Digital Services Coordinators of other Member States and the European Commission in the context of mutual assistance (Article 57 DSA) and, in that capacity, can exchange information necessary for the proper implementation of the DSA. In addition, the ACM will be part of the European Board for Digital Services and can participate in decision-making therein (Article 61 DSA). The European Board for Digital Services advises the Digital Services Coordinators and the European Commission on consistent application of the DSA.

Notably, the provisional designation does not relate to implementation tasks from the DSA that involve the "exercise of public authority". This is because the "granting of public authority takes place by or pursuant to a formal law". This means that based on this Decision, the ACM cannot implement the supervision of

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compliance with the DSA in the form of deploying supervisory powers or by taking enforcement action. It will also not have the power to make decisions with legal effects in the implementation of the DSA, such as certifying out-of-court dispute settlement bodies (Article 21 DSA) or awarding the status of “trusted flagger” (Article 22 DSA) or “vetted researcher” (Article 40 DSA). The ACM can only perform these tasks once the implementing law has entered into force.

Finally, given the provisional nature of the Decision, it will expire at a time to be determined by the Minister of Economic Affairs and as soon as the Digital Services Act Implementation Bill has been passed into law.

Besluit van de Minister van Economische Zaken en Klimaat van 11 februari 2024, nr. WJZ/ 45119378, tot voorlopige aanwijzing van de Autoriteit Consument en Markt als bevoegde autoriteit en digitaledienstencoördinator in de zin van Verordening (EU) 2022/2065 van het Europees Parlement en de Raad van 19 oktober 2022 betreffende een eengemaakte markt voor digitale diensten en tot wijziging van Richtlijn 2000/31/EG (digitaledienstenverordening)

https://open.overheid.nl/documenten/a406d64c-b496-4247-a9dd-b452c03dbc2d/file

Decision of the Minister of Economic Affairs and Climate of 11 February 2024, no. WJZ/ 45119378, provisionally designating the Netherlands Authority for Consumers and Markets as competent authority and digital services coordinator within the meaning of 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 (Digital Services Act)

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