

National Implementation of the Digital Services Act (DSA)

As of today (17 February 2024), the full applicability of the Digital Services Act (DSA) is activated. A new era of regulation begins for providers of intermediary services.

Although the DSA is a regulation, which directly applies within each EU Member State and needs no transformation into national local law, the EU Members States are obliged to designate their Digital Services Coordinator as new national supervision and enforcement authority and align their existing national laws with the DSA. In this overview, we summarize the status of 12 national EU Member States' laws complementing the DSA on national level and look at the following questions:

- The national law to 'implement' the DSA and its respective status.
- The designation of the Digital Services Coordinator (DSC) – as the DSA's national regulatory point of contact – and (where applicable) additional competent authorities.
- The most relevant changes to national law.

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Austria	<p>The Digital Services Coordinator Act (Koordinator-für-digitale-Dienste-Gesetz) was already issued on 23 October 2023.</p> <ul style="list-style-type: none"> ■ It includes changes to ■ the KommAustria Act; ■ the E-Commerce Act; ■ the General Civil Code; ■ the Copyright Act; ■ the Court Fees Act (Gerichtsgebührengesetz); ■ the Media Act; and ■ the Telecommunication Act 2021. 	<p>The Austrian Communications Authority (KommAustria) is designated as Digital Services Coordinator.</p>	<ul style="list-style-type: none"> ■ Removal of the provisions overridden by the DSA. ■ Court proceedings to trigger the information mechanism under Art. 9 DSA. ■ Introduction of a legal basis for non-material compensation for online hate speech. ■ Designation of an authority as Digital Services Coordinator. ■ Confidential reporting of illegal content. ■ Out-of-court dispute resolution. ■ Access for researchers to data from large intermediary services. ■ Reassessment of the current distribution key between market and federal share. ■ Implementation of the current legal basis of Art. 16 EU Directive 2018/1825. ■ Reorganization of the distribution of financing by the market and the federal government. ■ Financing of the regulatory burden for video-sharing platforms exclusively by the federal government. ■ Updating the terms and references used.

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Belgium	<ul style="list-style-type: none"> At federal level, the draft implementation Law of 31 January 2024 has been published on 31 January 2024 and must now go through the parliamentary process. Most important changes include modifications to <ul style="list-style-type: none"> the Code of Economic Law (CEL); and the Law of 17 January 2003 on the status of the regulator of the Belgian postal and telecommunications sectors. At local level, the Flemish authorities have adopted an implementing Decree on 26 January 2024. Changes include modifications to the Flemish Decree of 27 March 2009 on radio and television broadcasting. 	<ul style="list-style-type: none"> The Belgian Institute for Postal Services and Telecommunications (BIPT) is designated as competent authority (for the federal scope of competence). Federated entities may also adopt decrees to designate competent authorities for their scope of competence. For example, the Flemish Community has designated the Flemish Media Regulator (VRM) for supervising the intermediary services relating to certain broadcasting activities (Flemish Decree of 26 January 2024). The BIPT will most likely take the role of Digital Services Coordinator, but such designation did not take place yet, as it requires a cooperation agreement with federated entities (not yet adopted). 	<ul style="list-style-type: none"> Removal of the provisions of the CEL overridden by the DSA. Designation of the BIPT and the VRM as competent authorities, modification to their existing competence. Extension of the BIPT's powers (including new inspection powers) and enforcement powers (based on Art. 51 para. 2 DSA). Infringements to the DSA are subject to administrative fines and periodic penalty payments of up to the maximal amounts set in the DSA (in particular, Art. 52 para. 3 and 4 DSA). Introduction of a legal basis in Belgian law enabling the competent judicial or administrative authorities to issue injunctions against providers of intermediary services to make inaccessible illegal content and injunctions to provide information regarding infringements committed by a specific recipient of their services. Non-compliance with such injunctions may be sanctioned by a fine of up to EUR 200,000 or 6% of the annual turnover in the preceding financial year, whichever is higher.
Czech Republic	No implementing national law yet	Czech Telecommunication Office https://ctu.gov.cz/en/contacts	N/A

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France	<p>The draft Loi visant à sécuriser et réguler l'espace numérique (SREN Bill), whose latest version is dated 17 October 2023, is currently under discussion in the parliamentary process and still subject to changes. The draft notably includes changes to</p> <ul style="list-style-type: none"> ■ Law no. 2004-575 of 21 June 2004 on the confidence in the digital economy (LCEN); ■ the French Consumer Code; ■ Law no. 86-1067 of 30 September 1986 on freedom of communication; ■ Law no. 2018-1202 of 22 December 2018 regarding the fight against the manipulation of information (Fake News Act); and ■ Law no. 78-17 of 06 January 1978 on information technology, files and individual freedom (Data Protection Act). 	<p>The French Regulatory Authority for Audiovisual and Digital Communication (ARCOM) is designated as Digital Services Coordinator. Competent authorities also include the French Consumer Protection Authority (DGCCRF) and the French Data Protection Authority (CNIL).</p>	<ul style="list-style-type: none"> ■ Removal of some provisions overridden by, or incompatible with, the DSA. ■ Alignment of the definitions of intermediary services in French law with those in the DSA. ■ Determination of sanctions in case of breach of the DSA. ■ Designation of the competent authorities and Digital Services Coordinator and organization of the cooperation between these authorities. ■ Establishment of new investigation, injunction and sanction powers for ARCOM. ■ Creation of a national coordination network for the regulation of digital services, including many French regulators, such as ARCOM, CNIL, the competition authority (ADLC), the national agency for the security of information systems (ANSSI) or the regulatory authority for electronic communications, post and press distribution (ARCEP), with the objective to promote the sharing of information between those authorities, increase cooperation and conduct comparative analysis of regulatory practices in other EU Member States. <p>The draft also includes provisions that are currently being criticized as overlapping with or going beyond the DSA, or being otherwise incompatible with EU law such as</p> <ul style="list-style-type: none"> ■ provisions relating to the liability of intermediary services; ■ obligation for platform providers to suspend accounts of users that have been convicted for certain offences and prevent the creation of new accounts upon a court order; ■ additional obligations on intermediary services, such as retention of illicit content; and ■ age control obligations for publishers of pornographic websites. <p>Additional obligation for VLOPs to implement charters for the monitoring and support of moderators or give the French center of expertise for digital platform regulation access to the data referred to in Art. 40 para. 12 DSA.</p>

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Germany	<p>The draft German implementing act named Digital Services Act (Digitale-Dienste-Gesetz (DDG), published on 22 December 2023 aims to adapt the national legal framework to the DSA's requirements.</p> <p>The DDG is currently being discussed in the parliamentary process and may still be amended. In particular, the German Federal Council (Bundesrat) has published its current Position to the DDG draft (dated 02 February 2024) suggesting certain changes.</p> <p>It is expected that the DDG will be adopted in spring 2024.</p> <p>Most important changes include</p> <ul style="list-style-type: none"> the expiry of the German Telemedia Act (Telemediengesetz (TMG)); the expiry of large parts of the German Network Enforcement Act (Netzwerkdurchsetzungsgesetz (NetzDG)); and changes to other German sectoral legislation. 	<p>The German Federal Network Agency (Bundesnetzagentur (BNetzA)) is designated as Digital Services Coordinator.</p> <p>According to the DDG draft, the German Federal Commissioner for Data Protection and Freedom of Information is the competent authority for the enforcement of Art. 26 para. 3 DSA (profiling) and Art. 28 para. 2 and 3 DSA (protection of minors). However, it is currently being discussed whether state data protection supervisory authorities should instead be the competent authorities in this regard.</p>	<ul style="list-style-type: none"> Repeal of large parts of the German Network Enforcement Act (Netzwerkdurchsetzungsgesetz (NetzDG)) and other changes to sectoral legislation affected by the DSA. Repeal of the German Telemedia Act (Telemediengesetz (TMG)), whereby general information obligations and special obligations previously contained therein will be incorporated into the German implementing act of the DSA (DDG). Designation of an authority (BNetzA) as Digital Services Coordinator. Specification of the scope of powers that the Digital Services Coordinator or the competent authorities have (such as initiation of investigations, requests for information as well as conducting searches and seizures). Specification of the duties of the Digital Services Coordinator (such as preparation and submission of its annual activity report to legislative bodies). Special provisions on administrative fines in implementation of the DSA. Accordingly, DSA breaches can be subject to administrative fines of up to EUR 300,000 respectively up to 6% of the global annual turnover in the last financial year.

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Hungary	<p>Act CIV of 2023 on Certain Rules for Internet Intermediary Services DSA Executive Act.</p> <p>The DSA Executive Act has been published on 22 December 2023 and enters into force on 17 February 2024.</p> <p>Changes to</p> <ul style="list-style-type: none"> ■ Act LXXVI of 1999 on Copyright; ■ Act CVIII of 2001 on Electronic Commerce and on Information Society Services (E-Commerce Act); ■ Act CLXXXV of 2010 on Media Services and on the Mass Media; ■ Act CXCIV of 2011 on the Economic Stability of Hungary; and ■ Act XXIII of 2023 on cybersecurity certification and cybersecurity supervision. 	<p>The Hungarian National Media and Infocommunications Authority (NMHH) is designated as Digital Services Coordinator (pursuant to Sec. 110 point i of Act CLXXXV of 2010 on Media Services and on the Mass Media).</p>	<ul style="list-style-type: none"> ■ Definition of specific rules for online intermediary services with the aim of establishing the necessary national legal framework for the implementation of the DSA. ■ Repeal and amendment of legal provisions. ■ Designation of the NMHH as Digital Services Coordinator and definition of the Digital Services Coordinator's powers, competencies and establishment of its procedures. ■ Designation of the Online Platform Dispute Resolutions Board (Online Platform Vitarendező Tanács) as a newly established professionally independent dispute settlement body operated by the NMHH and competent for out-of-court dispute resolution. ■ Possible legal sanctions against an ISP established in Hungary in the event of a breach of the DSA or the DSA Executive Act (prohibiting the unlawful conduct and ordering the ISP to cease the unlawful conduct, requiring the ISP to publish a notice or the decision on the homepage of its website in the manner and for the period specified in the decision, issuing administrative fines), whose sanctions may be imposed together. ■ Definition of supervision fees for ISPs established in Hungary by exempting small and medium-sized enterprises (SMEs) and ISPs with annual net turnovers lower than HUF 100,000,000 (approx. EUR 265,000) from this obligation.

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Italy	<p>No implementing national law has been enacted so far, except for Art. 15 of Legislative Decree n. 123/2023, which has designated the Digital Service Coordinator for Italy and entrusted it with the power to impose the penalties provided for under Art. 52 DSA.</p> <p>In addition, on 12 October 2023, draft bill n. 965 has been presented before the Senate aiming at boosting coordination in the digital sector in Italy. While the draft bill does not aim at directly implementing the DSA, it would institute a committee for digital regulation in charge of reporting annually to the Italian Parliament on the application of digital policies, including DSA enforcement and monitoring activities. At this stage it is not possible to foresee whether the bill will reach approval stage.</p> <p>Finally, it is flagged that Italian D.lgs. n. 70/2003 implementing EU Directive 2000/31 still includes the implementing version of Art 12-15 EU Directive 2000/31, which have been deleted by the DSA. In principle, therefore, such Articles shall be removed from D.lgs. n. 70/2003. However, no initiative has been registered on this respect so far.</p>	<p>The Italian media regulator AGCOM (Autorità per le Garanzie nelle comunicazioni) is designated as Digital Services Coordinator.</p> <p>The Italian Data Protection Authority (Garante), the Italian Competition and Consumer Protection Authority (AGCM) and the AGCOM remain competent with respect to data protection, competition, consumer and telecommunication related issues and are under the obligation to support the Digital Services Coordinator's action under the DSA. In the future, a protocol may be adopted to coordinate collaboration among those authorities.</p>	

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Netherlands	<p>Draft Act on the implementation of Regulation (EU) 2022/2065 of the European Parliament and the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Regulation Implementation Act), which went to consultation on 14 July 2023 (opportunity to express public opinion). The latest version of the draft is currently under discussion in the legislative process, and subject to changes.</p> <p>The draft brings changes to</p> <ul style="list-style-type: none"> ■ the Electronic Commerce Directive Adaptation Act (Aanpassingswet richtlijn inzake elektronische handel); ■ the General Administrative Law Act (Algemene wet bestuursrecht); ■ the Copyright Act (Auteurswet); ■ Book 6 of the Dutch Civil Code (Boek 6 van het Burgerlijk Wetboek); ■ the Consumer Protection Enforcement Act (Wet handhaving consumentenbescherming); and ■ the Dutch Code of Civil Procedure (Wetboek van Burgerlijke Rechtsvordering). 	<p>The Netherlands Authority for Consumers and Markets [Autoriteit Consument en Markt (ACM)] as the Digital Services Coordinator.</p> <p>The Dutch Data Protection Authority (Autoriteit Persoonsgegevens (AP)) for the enforcement of Art. 26 para. 3 and Art. 28 para. 2 DSA.</p>	<p>The current draft of the Dutch implementation act brings only a few minimal adjustments to the laws mentioned above and creates some procedural obligations:</p> <ol style="list-style-type: none"> 1. Article 196c of Book 6 of the Dutch Civil Code is repealed. 2. The Netherlands Authority for Consumers and Markets and the Dutch Data Protection Authority shall conclude agreements in the interest of close and effective cooperation in the performance of their duties under the implementation act. The arrangements shall be laid down in a cooperation protocol. 3. Distribution and designation of supervisory duties and enforcement powers/tasks to the relevant authorities.

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Poland	<p>The legislation process is still at the pre-Parliamentary stage, before publication of the official draft legislation.</p> <p>On 5 January 2024, the newly appointed Ministry of Digitalization published the assumptions of the DSA implementation into the Polish legal system (Assumptions).</p> <p>According to the Assumptions, the DSA shall be implemented by amending the following existing acts:</p> <ul style="list-style-type: none"> ■ Act as of 18 July 2022 on the provision of electronic services (so far this act implemented EU E-Commerce Directive 2000/31); ■ Act of 16 July 2004 on Telecommunications Law; and ■ other sectoral legislation. 	<p>The President of the Polish Office of Electronic Communications (UKE President) is designated as Digital Services Coordinator.</p> <p>The UKE President is an already existing body, whose competences so far included the analysis, regulation and control of the telecommunications market. The UKE President is a legally separate and independent body with a 5-years office period, proposed by the Prime Minister and then appointed by the lower chamber of the Parliament (Sejm).</p> <p>Additionally, part of the duties as related to the application of DSA, will be performed by the President of the Polish Office of Competition and Consumer Protection.</p>	<p>No specific changes as to date, though based on the Assumptions the planned legislation will include the following:</p> <ul style="list-style-type: none"> ■ Rules on cooperation of the UKE President acting as the Digital Services Coordinator in certification/appointment procedures with authorities competent in the fields represented by the certification entity (Art. 21 DSA), trusted flaggers (Art. 22 DSA) or vetted researchers (Art. 40 DSA). ■ Regulations on civil liability and court proceedings in the event of a claim for damages for breaching DSA provisions. ■ Determination of the district courts (2nd level) competence in civil liability cases. ■ Right given to the UKE President to bring a court action in favor of the recipient of the service for a DSA breach and to join, with the consent of the plaintiff, the proceedings at any stage. ■ Introduction of uniform separate rules of procedure applicable in the event of the failure to comply with the DSA provisions, which may result in the decision ordering to stop the DSA breach and may be preceded with an optional investigation. ■ Rules of filing a complaint pursuant to the Art. 53 DSA to the UKE President acting as Digital Services Coordinator. ■ Determination of the sanction mechanism based on the DSA framework (Art. 52 DSA) for breaching DSA provisions, including <ul style="list-style-type: none"> – limitation of the periodic penalty to 5% of the average daily worldwide turnover or income of the provider of intermediary services; and – penalty at least of approx. EUR 115,800 (PLN 500,000) for not providing documentation upon the request, which would be the basis for the main penalty calculation.

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Portugal	<p>Portugal currently has not drafted any specific regulation to implement the DSA at a national level and there are no regulations currently in the draft or parliamentary process that introduce amendments to national law further to the DSA's requirements.</p>	<p>On 8 February 2024, the Council of Ministers approved a decree-law designating ANACOM (Autoridade Nacional de Comunicações) as the competent authority and coordinator of digital services in Portugal.</p> <p>The law also defines the Portuguese Media Regulatory Authority (ERC) as the competent authority for media and other media content and the Portuguese General Inspectorate for Cultural Activities (IGAC) as the competent authority for copyright and related rights, thus complying with EU Regulation 2022/2065 of the European Parliament and of the Council on a single market for digital services.</p> <p>Additionally, under the scope of the DSA, the Portuguese Data Protection Authority (CNPD) will be the competent authority to supervise the compliance of rules concerning data protection matters.</p>	<p>As mentioned above, there are currently no draft regulations being discussed in Portugal in regards to the law and respective amendments to national law. However, predictably, Decree-Law no. 84/2021 of 18 October 2021 regulates consumer rights in the purchase and sale of digital goods, content and services, transposing EU Directives 2019/771 and 2019/770 will have to be amended notably in order to introduce relevant provisions further to the obligations imposed on EU Member States by the DSA.</p>

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Slovakia	<p>Amendment to the Media Services Act No. 264/2022 Coll. The Act proposal was published in January 2024. The legislative process is currently pending (status is available here). The draft wording may still be revised during the legislative procedures (the Ministry is currently processing public opinions that were received during the procedure). The Act proposal should also amend the E-Commerce Act No. 22/2004 Coll. and the Audiovisual Services Act No. 40/2015 Coll.</p> <p>Slovakian law implementing the DSA should be effective on 01 September 2024.</p>	<p>The already existing Slovakian Media Services Council (Rada pre mediálne služby) is proposed to be the main body responsible for the application and enforcement of the DSA. This body already has competences in the field of video-sharing platforms and content-sharing platforms.</p>	<p>The current wording of the Act proposal regulates mostly procedural issues, in particular</p> <ul style="list-style-type: none"> ■ powers and tasks for the Slovakian Media Services Council (procedural parts of the proposal); ■ possible legal sanctions against an ISP in the event of a breach of the DSA or the DSA Executive Act or in the event that an ISP does not cooperate with the Slovakian Media Services Council. The maximum amount of the fine is up to 6% of the annual worldwide turnover of an ISP for the previous accounting period; and ■ the obligation to act without undue delay against certain types of illegal content (for example, child pornography). <p>The draft law also cancels the current national regulation of the limitation of ISP liability (that was implemented pursuant to the EU E-Commerce Directive 2000/31).</p>

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Spain	<p>Spain currently has not drafted any specific regulation to implement the DSA at a national level and there are no regulations currently in the draft or parliamentary process that introduce amendments to national law further to the DSA's requirements.</p> <p>Also, the Government has not yet published its Annual Legislative Plan for 2024, where it lists the different laws and regulations that it plans on drafting and discussing throughout the year. Previous years have seen this plan be published as late as May, hence probably in the coming weeks there will be a more definite answer regarding any Government plans in this regard.</p>	<p>The Spanish National Commission on Markets and Competition (CNMC) was designated as Digital Services Coordinator on 24 January 2024 by the Ministry of Digital Transformation and Civil Service.</p> <p>The CNMC will be in charge of ensuring the coordination, supervision and coherent enforcement of the DSA in Spain.</p> <p>Additionally, under the scope of the DSA, the Spanish Data Protection Agency (AEPD) will be the competent authority to supervise the compliance of rules concerning data protection matters.</p> <p>There will be full cooperation between the CNMC and the AEPD, which will allow for the efficient enforcement of the DSA and help avoid any incoherent overlapping between the DSA and the GDPR.</p>	<p>There are currently no draft regulations being discussed in Spain in regards to amendments to national law.</p> <p>However, predictably, Law 34/2002 (on info-soc services and e-commerce) will have to be amended notably in order to introduce the relevant provisions further to the obligations imposed on EU Member States by the DSA. Such as introducing the relevant infringements and associated penalties.</p>

Conclusion

As can be seen, some national implementation acts have not yet been completed and are still work in progress. It remains to be seen whether the respective national legislators will finalize the implementation of the DSA's national regulatory structures in a timely manner. It will also be of great interest for affected stakeholders, when and in what way the supervisory authorities as well as the European Commission will actually drive enforcement of the DSA.