

Questionnaire

“EU Digital Economy: general framework (DSA/DMA) and specialised regimes”

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In 2022, the European Union adopted two important legislative acts that aim to strengthen the EU Digital Single Market: the Digital Services Act, and the Digital Markets Act. Both regulations target the exercise of private power amassed by important digital gatekeepers. The goal of this report is to explore the institutional arrangements that the Member States have introduced to support the new EU legal regime and several other important issues that will likely influence the effectiveness of the two regulations in the coming years.

Section 1: National institutional set-up

1. Which pre-existing or new authorities have been designed for DSA enforcement in your Member State? If several, how are the tasks and responsibilities divided between them? How do such authorities interact with national sector-specific regulators (e.g. media, data protection, and consumer authorities)?
2. Which specific rules, resources or other measures have been adopted regarding the supervisory, investigative and enforcement powers of the competent authorities under the DSA? (e.g. allocation of powers and resources, the existence of special technical units, presence of procedural safeguards, supervisory fees, etc.) How many staff are dedicated to DSA enforcement?
3. What are the initial experiences with national competent authorities acting under the DSA (if any)? Did the authorities undertake any scoping exercises to map which companies are being regulated by the DSA in the Member State? Did they announce any enforcement priorities?
4. What tasks are allocated to competition authorities for the DMA enforcement? Do the authorities have the competence and investigative powers to conduct investigations into possible non-compliance with the obligations laid down in the DMA (under Article 38(7) DMA) and if so, how is this set up?

5. Which specific rules, resources or other measures have been adopted regarding the supervisory, investigative and enforcement powers of the competent authorities under the DMA? (e.g. allocation of powers and resources, procedural safeguards, supervisory fees, etc.) How many staff are dedicated to the DMA enforcement?
6. What are the initial experiences with national competent authorities acting under the DMA (if any)? Did the authorities announce any enforcement priorities?

Section 2: Use of national legislative leeway under the DMA/DSA

1. How are MSs dealing with the pre-emption effects of DSA? What happened to the (partially) overlapping pre-existing national laws? (e.g., hate speech notification laws; implementations of the E-Commerce Directive, including provisions on search engines, etc.)
2. Did the Member States try to map the national rules on the illegality of content that is relevant for the DSA enforcement? Were there any notable DSA-related changes in such content rules recently?
3. Apart from the institutional implementation of the DSA, what other related legislative acts were/are considered or adopted on the national level? (e.g., laws on influencers or other content creators, content rules, etc.)
4. How are MSs dealing with the pre-emption effects of DMA? (e.g., other rules ensuring fairness and contestability in digital markets)
5. Apart from the institutional implementation of the DMA, what other related legislative acts were/are considered or adopted on the national level?

Section 3: Vertical and horizontal public enforcement-related cooperation under DSA/DMA

1. What procedural or other rules related to the DSA and DMA are relied upon to create effective cooperation, both between national competent authorities of various Member States among themselves and with the European Commission? Do you see any potential challenges in this regard?
2. Which measures apply specifically to the role of national courts and their interaction with the European Commission (COM) in the context of the DSA and DMA (e.g., possible submission by COM of written or oral observations, avoidance of national court decisions running counter to COM decisions, transmission of national judgments, etc.)?
3. Are there areas of the DMA (e.g., particular obligations or categories of core platform services) for which you consider that the role of the national competition authorities is or is likely to be particularly useful in bringing to the attention of the Commission information about possible non-compliance with the DMA under Article 27 DMA?

Section 4: Private enforcement of DMA/DSA

1. In your Member State, can you observe any actions brought by private parties before national courts to enforce the provisions of the DSA or DMA? If so, please describe the relevant experience.
2. What are the actual or expected causes of action under national law to privately enforce DSA? What are their limits and opportunities? How likely is the use of private redress, including collective redress or contract law, in your Member State to enforce the DSA? What type of actors do you expect to be most likely to engage in private enforcement?

3. What are the actual or expected causes of action under national law to privately enforce DMA? What are their limits and opportunities? How likely is the use of private redress in your Member State? What type of actors do you expect to be most likely to engage in private enforcement?
4. Have any specific national rules been adopted (or planned for adoption) for private enforcement of either DMA/DSA (e.g. taking inspiration from the national rules transposing the antitrust Damages Directive)? Is there any plan to allocate cases concerning the DMA/DSA to a specific court or chamber and if so, which one?
5. Does the national procedural law allow civil society organisations to intervene in pending private disputes in support of the public interest? If so, how difficult or costly is it, and how does it work?

Section 5: General questions

1. Did your Member State specifically implement Articles 9 and 10 of the DSA in the national law? And if yes, in what way, and why? Does the national law specifying injunctions according to Articles 4(3), 5(2) and 6(4) meet the requirements of oversight by authorities or courts? Are there any specific rules, or cases in this regard in your jurisdiction?
2. Are you aware of the services of legal representatives according to Article 13 DSA being provided in your Member State? If so, please describe the situation.
3. Did the national law adopt any specific approach vis-à-vis complaints according to Article 53 of the DSA? (e.g., limiting them only to systemic violations)
4. Were the DSA or DMA subject to political controversy during the implementation on the national level, and if so, why?
5. Which measures have been taken, or are foreseen, to support the creation of out-of-court dispute resolution bodies, trusted flaggers, DSA/DMA-focused consumer organisations, and data access requests by researchers? Did the national legislature or regulators adopt any specific approaches in this regard?
6. Are there any other specific provisions or issues relating to the DMA/DSA that received particular attention from the side of practitioners (service providers, lawyers, regulators) or academics in your MS, because they are seen as controversial, complex or unclear? If so, please specify. Please limit yourself to issues that may be of relevance from a European perspective.