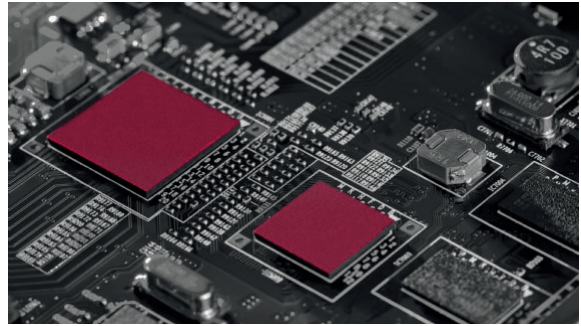


Tech Law Briefing

January 2024



The Year in European Tech Law Regulations

Dear Reader,

EU lawmakers have been busy in 2023 – in fact, so busy that it is difficult to keep track. With this Tech Law Briefing, we want to give an overview on the new Acts and their acronyms for those who – unlike us – do not work with these Acts every day.

All these Acts apply to all companies doing business in the European Union, whether they are registered within the EU or not. Violations can generally lead to severe fines of up to a percentage of the global annual turnover of the infringer.

Please find below our Tech Law Briefing.

Your Contacts:

Dr Andreas Lober

[vCard](#)



Lennart Kriebel

[vCard](#)



Dr Peggy Müller

[vCard](#)



Daniel Trunk

[vCard](#)



Tech Law Briefing:

The Year in European Tech Law Regulations

EU lawmakers have been busy in 2023 – in fact, so busy that it is difficult to keep track. With this Tech Law Briefing, we want to give an overview on the new Acts and their acronyms for those who – unlike us – do not work with these Acts every day.

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Section I: Adopted Acts

1. DIGITAL SERVICES ACT (DSA)

Status:

The Act will enter into full force on 17 February 2024. Providers of online platforms had to publish their monthly active users by 17 February 2023. The first designation of very large online platforms (VLOPs) took place in summer 2023. The following platforms have been designated VLOPs: Alibaba AliExpress, Amazon Store, Apple AppStore, Booking.com, Facebook, Google Play, Google Maps, Google Shopping, Instagram, LinkedIn, Pinterest, Pornhub, Snapchat, Stripchat, TikTok, Twitter, Wikipedia, XVideos, Youtube, and Zalando.

Amazon and Zalando have challenged this designation, the cases are pending, Amazon scored a partial preliminary victory.

In September 2023, the European Commission published a transparency database that monitors statements of reasons which providers of online platforms must send to affected recipients.

Scope:

The DSA addresses intermediary services (mere conduit, caching, hosting, online platforms, online search engines, including inter alia cloud

services, content sharing platforms, social networks, app stores and online marketplaces). The obligations depend on the type of the provided intermediary service. The DSA contains rules on liability for illegal content and obligations to remove and report such content. Providers must inform users about tools and strategies to restrict such illegal content in their general terms and conditions. If the service is primarily aimed at minors, such information must be described in a way that is understandable to the target group. In addition, the DSA provides for extensive transparency obligations and restricts personalised advertising even more than the GDPR.

Further reading:

[Tech Law Briefing: Digital Services Act \("DSA"\)](#)

[The Year of the DSA – Twelve quick bites of wisdom on the EU’s Digital Services Act](#)

2. DIGITAL MARKETS ACT (DMA)

Status:

The provisions apply since May 2023. The European Commission has designated six major tech companies including Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft as so-called 'gatekeepers' for their so-called 'core platform services'.

Scope:

The DMA focuses on competition law requirements for large platforms. It primarily affects platform providers with an overwhelming market power (such as Google, Apple, Facebook, and Amazon). This Act could strengthen the position of app providers and service providers vis-à-vis the gatekeepers and their core platform services.

This Act will most likely strengthen the position of Epic Games vis-à-vis Google and Apple.

Further reading:

[Tech Law Briefing: Digital Markets Act](#)

3. ARTIFICIAL INTELLIGENCE ACT (AI ACT)

Status:

The EU institutions have reached an agreement in the so-called trilogue negotiations on 8 December 2023. This means that the EU institutions have an agreement, but the final text is not yet public. There are going to be several technical meetings until the end of February 2024 to finalise the text. The Act is expected to enter into force in mid 2024.

Scope:

The AI Act will contain a definition of the term AI system in line with the OECD definition. The AI Act will categorise applications of AI into risk categories. Depending on the risk category regulations will differ. AI systems creating unacceptable risks will be banned, AI systems with high risk will be strictly regulated. AI systems with limited risk will be mainly required to comply with transparency obligations that enable the user to make an informed decision whether to use or not to use the application. Developers of general purpose AI (GPAI) will have to provide technical documentation about their AI and comply with copyright law. Non-compliance with the rules can lead to high fines of up to 7 % of the global annual turnover.

Further reading:

[The AI Act - The Agreement and What It Means](#)

4. DATA ACT

Status:

The Data Act was adopted by the Council of the European Union on 27 November 2023 and was published in the Official Journal of the European Union on 22 December 2023. This means it will enter into force on 11 January 2024. Most of the obligations arising from the Data Act will be applicable 20 months after its entry into force, i.e. on 12 September 2025. A special application date applies to individual provisions: The 'access by design' obligation for connected products and related services will apply from 12 September 2026. Certain legal requirements for data sharing terms in existing contracts will apply from 12 September 2027.

Scope:

This regulation is meant to radically change the data economy on the European market. Unlike the GDPR, it covers all data, i.e. not only personal data. It is supposed to give a broader audience access to generated data. The Act will go well beyond regulating the 'Internet of Things' as the scope aims at so-called connected products and related services in general, providers of which are so-called data holders and subject to many data sharing obligations, including 'access by design'. It also regulates 'data sharing contracts' and cloud services. Data holders are no longer allowed to freely share non-personal data with other players without a data license agreement. The Act also introduces a ban of unfair unilaterally imposed terms in B2B contracts on data sharing. Public authorities shall be permitted to request certain data in case of emergencies. Additionally, the Act aims to ease the switching between different cloud service providers.

The Data Act will (in some cases severely) affect companies that produce or process data. Users or third parties will have new access rights to all types of data, and new requirements for data sharing / licensing will be imposed.

Further reading:

[EU Data Act: Action required for Connected Products, Related Services and Cloud Computing](#)

5. PRODUCT LIABILITY DIRECTIVE

Status:

An agreement has also been reached to update the almost 40 years old Directive on the liability of defective products (Product Liability Directive - PLD). On 14 December 2023, the EU institutions have come to a political agreement. It is expected that the Directive enters into force in mid 2024. As a Directive, the rules need to be implemented into the national laws of the European Member States.

Scope:

The PLD aims to bring the product liability regime in line with technological developments, notably covering digital products like software (including firmware, computer programs, applications or AI systems). Liability is always on an EU-based business, such as a manufacturer, importer or their authorised representative that can be held liable for a product that caused damage, even if the product was not bought in the EU. Victims of damage will be able to seek for compensation not only for material damage, such as destruction of property, but also for non-material losses, including medically recognised damage to psychological health. It will also be possible to claim compensation following the destruction or corruption of data that are not used for professional purposes (e.g. deletion of files from a hard drive). The PLD furthermore simplifies the burden of proof for the person requiring compensation that would normally have to prove that the product was defective and that this caused the damage suffered. The PLD will not apply to open-source software.

Section II: Outlook

1. AI LIABILITY DIRECTIVE

Status:

No specified timeline yet. Proposal by the Commission was made on 28 September 2022.

Scope:

Proposal for a harmonisation of national liability rules for Artificial Intelligence. The rules shall ensure that victims benefit from the same standards of protection when harmed by AI products or services, 'as they would if harm was caused under any other circumstances' and shall especially address the specific difficulties of proof linked with AI.

2. CYBER RESILIENCE ACT

Status:

The Act was proposed by the European Commission in September 2022. In December 2023, the European Parliament and the Council of the European Union reached a political agreement on the Cyber Resilience Act. The compromise text will now be finalised and must then be formally adopted by the European Parliament and the Council of the European Union. It is expected that the vote on the trilogue draft takes place in March 2024 before the election of the European Parliament. Upon entry into force, manufacturers, importers and distributors of hardware and software products will have 36 months to adapt to the new requirements.

Scope:

The Cyber Resilience Act aims to set minimum standards across the EU for the security of software and products that are connected to other devices or a network. Under the Act, manufacturers are obliged to issue a declaration of conformity and to comply with certain minimum standards.

3. REGULATION ON PREVENTING AND FIGHTING CHILD SEXUAL ABUSE (CSAM)

Status:

No specific timeline yet. The Regulation was proposed by the European Commission in May 2022. In November 2023, the Civil Liberties Committee of the European Parliament adopted its position on new measures to protect children online by preventing and stopping child sexual abuse. The draft is not public yet. In a next step, the draft must be approved by the European Parliament before the trilogue negotiations take place.

Scope:

The Regulation will, as an addition to the DSA, contain more specific obligations for internet services providers. Under the Regulation, internet service providers shall identify the potential risk of use of their services for the purpose of online child sexual abuse and mitigate these risks.

EDITOR IN CHARGE:

Dr Andreas Lober | Rechtsanwalt

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