



## 1. Context

The Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector (also known as the Digital Market Act, hereafter 'DMA'<sup>1</sup>) aims to regulate large online platforms that are considered gatekeepers to ensure fair competition and protect consumers' rights. Gatekeepers are large digital platforms providing core platform services which have a strong economic position, a strong intermediation position and an entrenched and durable position in the market.

The DMA entered into force on 1 November 2022 and the DMA Implementing Regulation<sup>2</sup> entered into force on 2 May 2023. Currently the European Commission (hereafter 'EC') already designated six gatekeepers and 22 core platform services.



## 2. What's new?

On 28 March 2024, the Belgian Chamber of Representatives agreed to the adoption of an act implementing the DMA by amending certain provisions of the Belgian Code on Economic Law (BCEL) and inserting a new Title 4 to the fourth book of the BCEL: '*Application of Regulation (EU) 2022/1925*'.<sup>3</sup>

The DMA pursues uniformization and therefore prohibits Member States from imposing further obligations on the gatekeepers. The Belgian legislator has little leeway and the transposition concerns mostly the designation of certain powers to certain members of the Belgian Competition Authority (BCA). As the EC is the sole enforcer of the DMA, the BCA's investigatory power is a merely supporting role in the application of the DMA.



## 3. Why?

The DMA is a Regulation and therefore has direct (binding) legal force throughout every Member State from the date it enters into force. However, due to the technical nature of the Regulation and the division of powers applicable in Belgium a transposition in Belgian national law was required.<sup>4</sup>



## 4. How?

The most relevant modifications are the following:

- The Auditor-General is assigned the power to open, at its own discretion, a non-compliance investigation within the meaning of Art. 38(7) DMA. The BCA can make use of its investigatory powers under Art. IV.40-IV.40/5 BCEL.<sup>5</sup>
- The BCA must cooperate with the EC and both authorities must exchange relevant information through the ECN.<sup>6</sup>
- The BCA must inform the EC when launching an investigation or imposing obligations on a gatekeeper regarding national competition rules.<sup>7</sup>

- Upon request from the EC, the BCA must support the EC's market investigations.<sup>8</sup>
- A complaint mechanism is added where third parties may inform the BCA that there may be issues of non-compliance with the DMA.<sup>9</sup> The Auditor-General has full discretion about the appropriate measures and is under no obligation to follow up on this information.
- The Auditor-General can request the EC to open a market investigation under Art. 41(1-3) DMA under certain circumstances.<sup>10</sup>
- The BCA is designed to represent the Belgian State in the Digital Markets Advisory Committee.<sup>11</sup>
- The BCA's professional secrecy and confidentiality obligations are extended to the new title 4 and to the participation to the high-level group and Digital Markets Advisory Committee.<sup>12</sup>



## 5. When?

The Belgian Act was published in the Belgian Official Journal (Moniteur Belge) on 3 May 2024 and will enter into force on 13 May 2024.

For further questions about this regulation, please contact:



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<sup>1</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), 12.10.2022, L 265/1. (hereafter 'the DMA').

<sup>2</sup> Commission implementing regulation (EU) 2023/814 of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 of the European Parliament and of the Council, 17.04.2023, OJ L 102/6. (hereafter 'the DMA Implementing Regulation').

<sup>3</sup> Projet de Loi exécutant le règlement (UE) 2022/1925 du Parlement européen et du Conseil du 14 septembre 2022 relatif aux marchés contestables et équitables dans le secteur numérique et modifiant les directives (UE) 2019/1937 et (UE) 2020/1828 et modifiant diverses positions relatives à l'organisation et aux pouvoirs de l'Autorité belge de la concurrence, Doc.Ch. 2023-2024, n° 3813/002.

<sup>4</sup> *ibid.*, p. 14-15.

<sup>5</sup> Art. IV.26, §3 BCEL, *jo.* Art. IV.96 BCEL.

<sup>6</sup> Art. IV.98 BCEL.

<sup>7</sup> Art. IV.78/1 BCEL.

<sup>8</sup> Art. IV.97 BCEL.

<sup>9</sup> Art. IV.99 BCEL.

<sup>10</sup> Art. IV.100 BCEL.

<sup>11</sup> Art. IV.101 BCEL.

<sup>12</sup> Art. IV.32 BCEL.