

# Towards a Feasible Implementation of the Digital Services Act in the Western Balkans

Study of the regulatory and institutional preparedness for  
harmonization with DSA in the Western Balkans



## IMPRESSUM

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**Design:** Kliker design

**Publisher:** Partners for Democratic Change Serbia

The creation of this publication was made possible with the support of the Open Society Foundations – Western Balkans within the project Future of the Western Balkans in Digital Europe.

The content of the publication is the responsibility of the authors and does not necessarily reflect the views of the Open Society Foundations – Western Balkans.

# Key Recommendations

## **1. Implementation and alignment with the DSA and DMA must be based on a cross-sectorial, collective, and participatory process.**

Legislative design and institutional appointment should be led through a participatory process among stakeholders with topical expertise – not only on issues related to digitalisation and platform regulation but also in regard to data protection, constitutional rights, rule of law, administrative law, competition and consumer law, and economics. It is important that the design process utilizes a regional lens for sensitivity to political and societal activities (e.g. upcoming or recent elections).

## **2. Regulating digital service providers must ensure a high level of protection when it comes to freedom of expression and media freedoms, in line with international standards.**

Specifically, DSA design and implementation should not be used as a process for regulating specific content or types of media (e.g. online media) or ‘users’ but the focus must remain on the processes of content governance. In a similar vein, the DSA should not be weaponized to hinder media freedom in any case, noting regional trends of states undermining media under the guise of combating disinformation.

## **3. Legal certainty and long-term functional and open engagement online must be preserved.**

Vague and open-ended provisions should be avoided at all costs. The recently adopted European Media Freedom Act should be consulted to ensure synchronization.

## **4. When it comes to DSA institutional responsibilities, involvement of CSOs is essential. This will also bolster DSC independence and increase public trust.**

CSO involvement is particularly important for the region when it comes to oversight responsibilities. A system of checks and balances (e.g. transparency obligations, accountability mechanisms, citizen participation) must be integrated within the DSA-implementing provisions. This approach would also increase mutual trust among stakeholders in the region.

## **5. The independence of DSA design and enforcement through independent DSCs.**

This can be also achieved through consistent allocation of financial, human and technological resources and capacities. In line with the DSA provision, DSCs in the EU selected institutions have increased their staff with diverse skill sets and requisite knowledge.

## **6. Collaborative regional investigations and approaches to increase intermediaries' liability and accountability.**

In the WB region, the cultural and language similarities also point to regional cooperation when engaging with and providing oversight of platforms as beneficial for regional civil society, as a whole.

## **7. A coordinated, regional approach, led by CSOs.**

With the support of European and international partners, the collective efforts of CSOs will continue to ensure a coordinated, responsible and human rights-centered strategy for the upcoming DSA and DMA alignment process in the region.

## **8. Continue to strengthen systemic cooperation with the European Commission, DSCs, and European professional bodies.**

Effective coordination and stakeholder engagement across the WB region necessitates a constructive dialogue with representatives of the European Commission. While the current efforts on the side of the European Commission provide a solid foundation, advancing this effort requires specific, incremental steps. These steps are crucial to ensure that alignment with the DSA includes robust guarantees and safeguards, essential for cultivating secure and dynamic online ecosystems. Learning with and from European counterparts is essential to that end.

## **9. Initiate in-depth and two-directional cooperation with platforms on issues that urgently need addressing in the regional context in line with the DSA due diligence mechanisms.**

As stated in the CSF WB 'Berlin Process' recommendations and confirmed in this study, online platforms should be encouraged to extend their DSA compliance mechanisms to the WB region. This would ensure a unified internal digital market approach across Europe and provide an equal level of protection to all European citizens, including those in candidate countries.

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# Introduction

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The Digital Service Act (hereinafter: DSA) represents the most ambitious regulation, both at the European Union (hereinafter: EU) and the global level that aims to protect the fundamental rights of users of digital services. It does so by prescribing the mechanisms for protecting digital space from illegal content and by setting up the rules for the transparency and accountability of digital platforms. Together with the Digital Markets Act (hereinafter: DMA) it is a part of the EU Digital Services Package, aimed at providing protection for digital service users while fostering innovation. However, the DSA and DMA bring a number of challenges, mostly related to their potential impacts on freedom of expression.

Keeping in mind the existing issues in democratic and institutional infrastructure in the Western Balkans, as well as previous experiences with harmonization with data and digitalization-related regulations (such as the General Data Protection Regulation, GDPR), the study “Towards a Feasible Implementation of the DSA in the Western Balkans” examines the existing regulatory and institutional preconditions for the implementation of DSA-like laws in the region. Specifically, the Study elaborates on the countries’ readiness for harmonization of their national regulations with the DSA and assesses the possible impact of these regulatory reforms. The predominant focus of the Study is the Western Balkan’s<sup>[1]</sup> preparedness for harmonization with DSA; however, it also addresses provisions of DMA to the extent that this legislation converges with the DSA.

The Study was developed within the project, “Future of the Western Balkans in Digital Europe” supported by the Open Society Foundations – Western Balkans (OSF). We thank the OSF Western Balkans for their support throughout this process, as well as for their continuous work on strengthening civil society in the Region.

This study represents a joint effort of researchers from six civil society organizations from the Western Balkans - Danche Danilovska – Bajdevska (Metamorphosis Foundation, North Macedonia), Emily Wright (Partners Serbia, Serbia), Maida Culahovic (“Zasto ne?”, Bosnia and Herzegovina), Milica Tosic (Partners Serbia, Serbia), Megi Reci (The Institute for Democracy and Mediation, Albania), Snezana Nikcevic (NGO 35mm, Montenegro), Teuta Sahatqija (Women in Tech, Kosovo). The study structure, methodological guidelines and coordination, as well as final editing and synthesis of findings (see: Introduction) were provided by Bojana Kostic, a digital rights expert, and final copy editing by Emily Wright. We thank them all for their contributions and readiness to share their extensive knowledge. We’d also like to give special thanks to Michelle Mellioux and Bogdan Manolea, who generously

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[1] For purposes of this Report, the Region, or Western Balkans, refers to Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia.

shared French and Romanian experience respectively, in implementation of DSA, as well as to Montserrat Legorreta, Operations and Program Associate at Global Network Initiative, who shared insights into GNI's unique multi-stakeholder approach. We would also like to express our deep gratitude to representatives of public institutions, international and local organizations, media, and academics from EU and the WB region who participated in the research. Their insights were crucial for understanding the specifics of each of the regulatory ecosystems when it comes to overall digital rights issues, as well as for setting the path for future reforms in the field.

In addition to providing an overview of the DSA and DMA-related state of play in the WB, this Study supports further engagement of civil society, media, private actors and public institutions in reforms in the digital rights field. Finally, our hope is that the Study will not only contribute to enhancement of the Region's readiness to enter the Digital Single Market, in line with the EU's new Growth Plan for the Western Balkans,<sup>[2]</sup> but to reaching of the joint goal of all the WB6 - the full EU membership.

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[2] European Commission, "New Growth Plan for the Western Balkans," European Commission: European Neighbourhood Policy and Enlargement Negotiations (DG NEAR), 2023, [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/new-growth-plan-western-balkans\\_en](https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/new-growth-plan-western-balkans_en).

# Methodology

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The research preceding the drafting of the Study “Towards a Feasible Implementation of the DSA in the Western Balkans” was performed from February to May 2024 with the following objectives:

- › To leverage the regional advocacy efforts towards the implementation of the DSA in line with human rights standards and the rule of law;
- › To assess readiness and the needs of the competent state authorities responsible for the DSA implementation;
- › To advocate for and propose models for a functional Digital Service Coordinator (DSC) from a multi-stakeholder perspective.

The key research question focused on the prospects and needs for ensuring that DSA implementation is aligned with human rights standards and the rule of law in the WB countries.

The Study covered the geographical scope of WB6—Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia—as well as the case studies presenting the experiences in implementation of DSA in the national regulatory frameworks of the EU member states – France, Germany and Romania. Finally, the Study explored the implementation of a multi-stakeholder approach to protecting digital rights through the example of the Global Network Initiative. For the country overviews, the resources used desk research on the legal frameworks, jurisdictions, and capacities of the competent state authorities. Additionally, other relevant reports published by international and local organizations and institutions were used. In addition, local researchers performed interviews with national and international stakeholders that included public institutions and international and local civil society organizations working in digital rights, media freedoms, or similar fields. Based on these resources, the researchers provided key recommendations and guidelines for future reforms relevant to DSA-related issues.

# Part One: How to leverage the power of the DSA and DMA in the Western Balkan countries?

Before introducing the framework of this relevant research project, we would like to express our deep gratitude to the country's case study authors— a group of women researchers— for their excellent collaboration, inspirational insights, and tedious work. It is due to their dedication, attention to detail, and comprehensive insights that we can introduce you to the state of platform regulation in the Western Balkan (WB) countries, specifically the legislative and institutional readiness to engage in the process of implementation of the Digital Service Act (DSA) and Digital Markets Act (DMA). We are also grateful to our European colleagues, who enabled us to learn from their countries' experiences that we present in this research. Finally, a big thanks to the Global Network Initiative that taught us about participatory and meaningful multi stakeholder engagements.

This study builds on the WB country case studies and several EU countries' implementation experiences to produce a unique perspective for the WB legislative and institutional alignment with these legislative building blocks. As acts, the DSA and DMA provisions are directly enforceable in the EU Member States; the states have very limited 'maneuvering' space to derail from the rules set out in these acts. However, this is somewhat different for the WB countries that are not full-fledged members of the EU and, as such, need to undertake a carefully assessed, balanced, and robust process of 'translation' and adaptation of the provisions into their national laws. This study is a step in this direction, as it offers a set of guiding principles that stakeholders involved in the transposition process should consider. As always, we stand at the disposal of all the actors involved in this process to share our knowledge and expertise.

Under the DSA, the regulation and oversight of the big tech companies<sup>[3]</sup> conduct, notably very large social media companies and search engines, surpasses the boundaries of individual countries, both within the EU and at the WB level. As such, it falls under the exclusive regulatory responsibility of the European Commission. However, Member States and potentially Western Balkan countries still have a crucial role to play in ensuring that the

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[3] Seemingly funny referred to as Very Large Online Platforms (VLOPs) and Very Large Search Engines (VLOSEs). See: European Commission list of dedicated VLOPs and VLOSEs that fall under the DSA regulatory framework: <https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses>

liability rules and due diligence mechanisms prescribed by the DSA and DMA are properly and effectively applied in their respective countries vis-à-vis digital service providers under their jurisdiction. This heavy and responsible task falls within the scope of work of the Digital Service Coordinators (DSC). Given their novelty, mandate, and noted responsibility, we have decided to delve into the feasible, context- and country- specific DSC models for the WB countries that are presented in the country case studies in this research. We will further work on shaping these DSC models as well as on developing specific policies to offer solutions for addressing legislative and institutional issues stemming from these acts. Here again, we invite you to contribute to our advocacy efforts.

These advocacy efforts are a continuation of the process initiated at the Civil Society Forum of the Western Balkans (CSF WB - 'Berlin process'). Through the consultation with 30 actors from the region, our colleagues from Zašto ne? produced Key Recommendations of the Thematic Group on Digitalization and Connectivity, clustered around three pillars: facilitating the entrance of the WB countries into the EU Digital Single Market; applying the DSA in the region; and advocating for the expansion of the Code of Practice against Disinformation commitments to the WB region. Building on this process, this study serves as an impetus for designing and engaging in the strategic and coordinated advocacy process by "building region-wide multi-stakeholder coalitions" to ensure meaningful engagement with platforms ensuring equal level of protection guaranteed under the DSA for the Western Balkan citizens<sup>[4]</sup>.

From this research process and the Key Recommendations, it became clear that we all depend on joint and coordinated efforts that stretch beyond our organizations to achieve this goal. We hope to engage with not only regional actors but also the international community and donors, European Union authorities, Member States' DSCs, European and international civil society organizations, critical thinkers, and the digital rights community and tech-companies. The DSA and DMA were built through a performative process involving all of these stakeholders. Consequently, that is how their enforcement is foreseen. Through these messy and multi-stakeholder dynamics, we will aim to ensure that the alignment process results in heightened platform accountability, the protection of individual human rights, and long-term multi-stakeholder engagement. We count on you!

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[4] The Civil Society Forum of the Western Balkans (2023). Key Recommendations of the Thematic Working Group on Digitalization and Connectivity, p.6 [https://www.wb-csf.eu/docs/03\\_Key-Recommendations-of-the-Thematic-Working-Group-on-Digitalization-and-Connectivity.pdf.pdf](https://www.wb-csf.eu/docs/03_Key-Recommendations-of-the-Thematic-Working-Group-on-Digitalization-and-Connectivity.pdf.pdf)

# DSA and DMA in a nutshell: scopes and differences

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DSA and DMA represent two significant pillars of the European Union's efforts to modernize regulations for digital service providers. Although they belong to the same EU digital service package, they differ in scope and objectives. The DMA focuses primarily on specific gatekeepers, namely companies that wield substantial influence in the market. In contrast, the DSA adopts a broader scope, targeting various digital intermediary services and imposing more stringent regulations on extremely large online platforms (VLOPs) and search engines (VLOSEs) to mitigate societal risks linked to their activities.<sup>[5]</sup> Also, while the DMA primarily concentrates on promoting fairness and competitiveness within the digital market, the DSA tackles the EU's worries regarding online dissemination of illegal content, as well as the increasing influence of online platforms in political discourse, the spread of disinformation, especially before elections, and the impact of harmful content. Even though each act addresses distinct aspects of digital service providers, they share several key similarities in their objectives and underlining operational mechanisms.

Both the DSA and the DMA introduce intermediary accountability frameworks tailored to the digital sphere. Under the DSA, the focus lies on updating the liability regime for online platforms and stiffening requirements around how they manage circulation of the illegal and harmful content.<sup>[6]</sup> Similarly, the DMA addresses the behavior of large online platforms acting as gatekeepers, holding them accountable for their actions in the digital market and preventing them from acting as monopolies. Market regulation is a central theme in both acts, only from different perspectives. While the DSA emphasizes regulating measures related to content moderation, transparency, and user rights, aiming to create a safer online environment, the DMA focuses on ensuring fair competition, fostering innovation, and safeguarding consumer choice in digital markets, particularly in cases where gatekeeper platforms exert significant influence.

Transparency and accountability are fundamental principles in both the DSA and the DMA. The DSA mandates transparency regarding content moderation practices, advertising, and content curation and moderation algorithms. Similarly, the DMA imposes transparency obligations on gatekeeper platforms, requiring them to provide access to data, reveal

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[5] For more information, see this presentation: [https://www.epra.org/news\\_items/dsa-provisions-on-vlops-enter-into-force](https://www.epra.org/news_items/dsa-provisions-on-vlops-enter-into-force)

[6] Please note that the DSA does not prescribe any rules on the content that can be disseminated online nor does it stipulate which content should be considered illegal, apart from the fact that what is illegal offline should also be illegal online and thus not be made available. For more information about the DSA, see: DSA, A Handbook For Public Service Media, EBU, 2022

their profiling strategies, ensure interoperability, and disclose recommendation algorithms, fostering a more transparent and accountable digital ecosystem. Also, both acts prioritize users' rights and protections, but with different emphases. The DSA imposes obligations on digital services to protect users' fundamental rights, including freedom of expression, privacy, and non-discrimination, safeguarding user safety and autonomy. On the other hand, the DMA aims to protect businesses and consumers from unfair practices by gatekeeper platforms, promoting a level playing field and consumer trust in the digital marketplace. In the following lines, we will provide a more detailed insight into the regulatory logic of the DSA as it was a predominant research focus of this analysis.

When it comes to the main liability rules for digital service providers – intermediaries,<sup>[7]</sup> they did not drastically change under the DSA. They remain guarded from responsibility for the content that circulates within their services both to those that are established within the EU and those outside the EU that provide their services in the single market.<sup>[8]</sup> For example, Google and Meta are not responsible for the content that violates someone's privacy or defames another person. When they gain knowledge about this piece of content, the so-called knowledge-based liability kicks in. This is often triggered by the user's notifications. The DSA also adopts the principle of notice-and-take-down that originates from the E-Commerce Directive. According to many authors, this limited liability principle – effectively a general monitoring prohibition – is a backbone of internet regulation that enables the 'free' flow of information, ideas, and knowledge. In the words of prof. Husovec, "Without the sympathy of the law, there is no internet as we know it."<sup>[9]</sup> However, what makes the DSA novel and special is a new set of due diligence rules and related obligations that are gradually increasing for digital service providers (mere conduit services, caching, hosting services (e.g. Dropbox), online platforms and very large online platforms and search engines) depending on their size. In this way, the DSA departs from the one-size-fits-all solution and seeks to 'patch' a hole in the limited liability principle that often leaves citizens without effective procedures to seek and receive protection from various forms of harmful content (e.g. online harassment of women). In line with the DSA, these content specific rules are strictly procedural leaving the countries' legislative systems (partly) to delineate legal from illegal speech within their laws. Partly, because service providers, like social media platforms, inevitably draw this line within their Terms of Service.<sup>[10]</sup> With the effective enforcement of the DSA, the citizens will be able to access internal appeal systems, granting them also the right to explanation, but also a novel

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[7] Broadly speaking, this refers to a wide range of digital services – so-called mere conduit, caching and hosting intermediary services – that allow users to store and oftentimes share information, such as internet access services, cloud services, but as well e-commerce services, rental platforms, search engines, app stores, social networks or content-sharing platforms.

[8] See more on this: Martin Husovec & Irene Roche Laguna, *Digital Services Act: A Short Primer*, 2023, p.4

[9] See more about the genesis internet regulation and in particular DSA novelties. M. Husovec, *Rising Above Liability: The Digital Service Act as a Blueprint for the Second Generation of the Global Internet Rules*, *Berkeley Technology Law Journal*. Vol.33, 2023, p.893

[10] ARTICLE 19, *Side-stepping Rights: Regulating speech by Contract*, ARTICLE 19, 2021, p.14

out-of-court appeal system, and more transparent advertising and recommender systems. The digital service providers will also need to establish country representatives, produce comprehensible content moderation reports, submit crime notifications to authorities, etc.

That is not all. Alongside novel due diligence content moderation rules and unrelated to the liability rules, the DSA adds more responsibilities to the service providers' plates through a set of risk management obligations. They are best described as a regulatory intervention to ensure a more robust system to address potential 'systemic risks'<sup>[11]</sup> and harms stemming from their services and products.<sup>[12]</sup> However, only providers with 45 million average active monthly users, regardless of size and turnover, are the upper tier companies. They must comply with detailed and expansive general fundamental rights risk management rules.<sup>[13]</sup> The companies in the lower tier should worry about the impact of their services on minors and ensure protection against manipulative and aggressive practices, referred to as dark patterns. The upper tier must meet these requirements too. According to legislation, the oversight and control of these upper-tier companies and large and very large online platforms, falls within the scope of the European Commission.<sup>[14]</sup> The lower-tier companies are primarily assessed by the Digital Service Coordinators along with the European Board for Digital Services. They are both newly established institutions that will harness great attention and responsibility in the coming years.

This brief analysis of DSA and DMA provisions serves to demonstrate the intention of EU legislators to regain control over quasi-public online ecosystems and increase digital services' accountability while balancing internal market rules, users' agency, and companies' powers. Indeed, it is a delicate and fragile balancing act that requires multi-stakeholder engagement based on trust and goodwill and rooted in human rights protection.

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[11] For more on this see: M.Loi, Making Sense of the Digital Service Act: How to Define Platforms' Systemic Risks to Democracy, Algorithmic Watch, 2023. This publication is especially relevant for the media freedom community as it highlights different systemic risks in relation to media freedom and media pluralism. A subject matter that by far deserves more regional attention.

[12] For a more in-depth understanding of the relation between harm and size, see: Sally Broughton Micova, What is the Size in Harm? Very Large Online Platforms in Digital Service Act, Center on Regulation in Europe, 2021. In particular, the author notes: "The largeness of a platform at the EU level may not reflect the systemic risk it poses in some Member States. For example, a service could be well below the VLOPs Union-wide threshold yet have over 300,000 users in Estonia or Slovenia, where that reach equates to a large portion of the population and rivals the audiences for the informational content of their national media", p.12

[13] European Center for Non-profit Law and Access Now, Towards Meaningful Fundamental Rights Impact Assessment, 2023. In particular, they note several key criteria that are relevant for the WB context: significant negative effects on human rights, external factors (e.g. geopolitical situation and emergency situation), special attention to vulnerable groups, prior restraint on content circulation through automated measures, p.15-16

[14] Article 33-43 DSA



# Our Key Insights

**According to our analysis, and if implementation of the Audiovisual Media Service Directive is any indicator, the engagement with the DSA and DMA will only constitute a response to EU requirements for alignment with the EU acquis. It is also clear that no single WB country has initiated the process of DSA institutional and legislative alignment. To ensure proactive and preemptive alignment processes and coordination, for a more holistic and tailored response, the following findings can serve as a guide for state actors, private companies, and CSOs.**

Overall, a strong EU legislative alignment process in all WB countries has served as a legislative impetus, resulting in a number of new legislative acts that, at least from a normative perspective, bring the regional legal systems closer in alignment with EU acquis. There are several other regional insights that can help streamline regional advocacy efforts towards beneficial regional implementation of the DSA, in line with human rights standards and the rule of law. These include:

1. The existing digital and media regulations, including cybersecurity norms, set a broad and flexible framework to accommodate novel provisions introduced under the DSA. In all of the countries, internet service providers enjoy limited liability, including the prohibition of general monitoring. This is often followed by a number of obligations for specific providers related to their transparency obligations, neutrality, and protection of personal data, etc.
2. Similarly, though there are no specific provisions vis-à-vis social media platforms or search engines, in the majority of the countries, the existing audiovisual media service regulation, in line with the EU Audiovisual Media Service Directive,<sup>[15]</sup> sets important legislative foundations. For example, an extension of regulatory oversight over video streaming and/or video sharing platform service providers as well as internet service providers, like in Bosnia and Herzegovina, and novel provisions concerning protections against harmful or illegal content, protection of minors and advertising practices are all important legislative building-blocks.

[15] EU Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities

3. Especially relevant are the consumer protection and e-commerce laws that provide citizens with elementary legal protection in the context of digital commercial activities. More research is needed to understand how to specifically adapt these laws to the DSA and DMA novelties in this field.
4. From a perspective of institutional readiness, all the countries have, following the EU media regulatory tradition, established National Regulatory Authorities (NRAs). With the exception of Bosnia and Herzegovina, where the NRA functions as a converged regulator, in charge of both electronic media and electronic communication, the NRAs are tasked with oversight of electronic media, whereas the Regulatory Authorities for Electronic Communication focus on the services and infrastructural aspects and actors within this domain. Regardless, the underlying concern across all the countries is an increased political and economic influence over these bodies, coupled with a lack of adequate knowledge, skills, financial and human resources.<sup>[16]</sup>
5. In a similar vein and due to the multi-sectoral nature of the DSA, the alignment process seems to be falling under the scope of various ministries and independent authorities. In addition, in North Macedonia and Albania, there are dedicated bodies in charge of information society and/or the digitalisation process that seem to be the driving force for these legislative and institutional processes. Similarly, in Albania, the National Plan on European Integration (NPEI) 2022-2024 already envisages adoption of the DSA and DMA and assignment of dedicated institutions in charge of this process. These bodies are constituted primarily of ministries and other independent authorities, and as such, they are well placed to establish a platform for cross-sectoral collaboration.
6. This collaboration, in line with our analysis, must include from the outset the knowledge and expertise of local and regional civil society organizations. This must be a priority for the following reasons:
  - › The DSA envisages an “ecosystem solution”<sup>[17]</sup> with both state and non-state actors’ meaningful involvement (e.g. trusted flaggers and through codified and out-of-court appeal mechanisms).

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[16] J. Jaurisch, Platform Oversight: Here is how a Strong Digital Coordinator Should look like, in Putting the DSA into Practice, ed. by J.van Hoboken et al, Verfassungsbook, 2023, p.96 and p.100

[17] M. Husovec, Rising Above Liability: The Digital Service Act as a Blueprint for the Second Generation of the Global Internet Rules, Berkeley Technology Law Journal. Vol.33, 2023, p.917

- › The years of accumulated CSOs expertise and knowledge, including in academia, can provide data and experiential knowledge to boost multi stakeholder collaboration, increasing the odds of a functional, institutionally sound DSA framework.
- › As noted in the case study on Serbia, in fragile democratic systems, the involvement of CSOs in the DSA alignment process may result in more effective legislative checks and balances, power distribution, and consequently, legislative and institutional efficiency.
- › Certain provisions of the DSA (like cooperation with social media platforms) have already been initiated by CSOs. Including more stakeholders for greater transparency and resource distribution is of mutual interest and could benefit the society as a whole.

This is also clear from the CSF WB Key Recommendations that also highlighted that state and non-state actors' individual and collective efforts are crucial. This has been confirmed through dozens of interviews with decision-makers from across the WB throughout this research.

7. In several countries (Albania, Bosnia and Herzegovina), various institutions are submitting themselves as candidates for DSC positions. A coordinated effort between authorities is in line with DSA provisions and has been implemented in many member states (see: case study on France and Germany). As much as in the EU context, the process of WB implementation will require multi-stakeholder and cross-institutional protocols for collaboration and distribution of tasks for effective DSC flexible design. A similar approach was applied in France where the law established which institution assumed DSC roles, but provided flexibility for a variety of coordination efforts.
8. These coordinated multi stakeholder collaborations are crucial for the creation and well-functioning and operational DSCs, which was emphasized in Montenegro, as well. The German case study - as well as research into similar implementation schemas in Serbia and Kosovo - showcased a potential civil society led advisory body for DSC implementation. In France, civil society may play a more active role in the future of DSA implementation, and, as of this document's publishing, has engaged in the DSA consultation process, which is similar to potential regional implementation in North Macedonia. Similar recommendations were also proposed in a prominent study that looked into the feasible mechanisms of involvement of the CSOs in the DSA enforcement - "Putting Collective Intelligence to the Enforcement of the DSA". The author highlights that cooperation between DSCs and CSOs can ensure oversight and proper implementation.<sup>[18]</sup>

[18] Suzanne Vergnolle, Putting Collective Intelligence to the Enforcement of the Digital Service Act, 2023, p.24

Our research revealed at least three potential multi-stakeholder models of DSC implementation that will be developed further:

- i. Advisory model that includes CSOs, private sector, and academia in the process of consultations and oversight;
- ii. Co-executive model in which state authorities and non-state actors jointly assume DSC operations and duties within their own legislative and institutional frameworks;
- iii. Watchdog model that tasks CSOs with DSA alignment and design process, as well as an external public oversight role.

# Ways Forward and How Tos?

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Almost all EU Commission Country reports for 2023 note that “in the e-commerce domain, alignment with the Digital Services Act and Digital Markets Act needs to be stepped up, to provide predictability for the business community.”<sup>[19]</sup> Our findings show that various bodies – ministries, regulatory authorities, and law enforcement officials, cybersecurity and digitalisation units - have already been in contact with EU counterparts concerning this new regulatory framework, most notably through Technical Assistance and Information Exchange (TAIEX<sup>[20]</sup>) programmes. Additionally, the Council of Europe country offices have started to provide policy support for development of a general implementation framework for elements of platform regulation.<sup>[21]</sup>

Civil society organizations have also worked with their EU counterparts, and international organizations to monitor and report back for a more thorough understanding of the platform regulatory landscape outside the EU, and the so-called ‘DSA spill-over effect’. Civil society actors have been and continue to establish much needed channels of communication with social media platforms. Across the region, there are numerous fact-checking organizations, trusted partners and escalation channels that, together and with all of their limitations, create an ecosystem that should be leveraged when it comes to regional DSA policy design. Taken as a whole, these various initiatives are crucial for regional engagement in DSA processes, and their better alignment and coordination across the region is the only way to see regional benefit in the new era of platform regulation.

There are several pertinent issues and questions that require assessment in collaboration with the European Commission. For instance, it remains uncertain whether attributing responsibility to online platforms and search engines will diverge significantly from the legislative intent of the DSA, considering that oversight primarily lies with the European Commission. Looking ahead, it is crucial to understand whether national oversight of online platforms conduct will hold meaningful sway given the peripheral status of countries vis-a-vis EU driving forces. Similar concerns have been raised regarding EU member states on the periphery (such as Estonia, Malta, Slovakia, etc).<sup>[22]</sup>

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[19] See for example, E. Commission 2023 Report for Serbia available at: [https://neighbourhood-enlargement.ec.europa.eu/serbia-report-2023\\_en](https://neighbourhood-enlargement.ec.europa.eu/serbia-report-2023_en), E. Commission Report Albania 2023, available at: [https://neighbourhood-enlargement.ec.europa.eu/albania-report-2023\\_en](https://neighbourhood-enlargement.ec.europa.eu/albania-report-2023_en)

[20] To learn more, see: [https://neighbourhood-enlargement.ec.europa.eu/funding-and-technical-assistance/taix\\_en](https://neighbourhood-enlargement.ec.europa.eu/funding-and-technical-assistance/taix_en)

[21] For more information, see: Country Case Study: Bosnia and Herzegovina

[22] Jenny Orlando-Salling, Louisa Bartolo, The Digital Service Act seen from Periphery, DSA Observatory, 5 October 2023, available at: <https://dsa-observatory.eu/2023/10/05/the-digital-services-act-as-seen-from-the-european-periphery/>

It remains to be seen whether future DSCs will have opportunities to cooperate with their EU counterparts and the European Commission, aiming not only for the free flow of services but also for the “free flow of protection and enforcement.”<sup>[23]</sup> Membership in European bodies like EPRA, ERGA, EBU, and BEREC can certainly facilitate cooperation but should not be the sole mechanism for this extensive regulatory cooperation.

Finally, the research confirms that social media and search engines companies continue to demonstrate limited meaningful and systematic interest in the region. Despite occasional channels of communication, these service providers must engage with stakeholders and societies in a human rights-responsible manner. The forthcoming compliance with the DSA will serve as a litmus test for how protection prescribed mechanisms can operate effectively in regions facing democratic challenges and authoritarian inclinations, both within the Western Balkans and across Europe.

Against this background and bearing in mind the set of recommendations that came out through the CSF WB - ‘Berlin process’, the authors of this research propose additional set of substantive recommendations towards this ultimate goal:

**1. Implementation and alignment with the DSA and DMA must be based on a cross-sectorial, collective, and participatory process.**

Legislative design and institutional appointment should be led through a participatory process among stakeholders with topical expertise – not only on issues related to digitalisation and platform regulation but also in regard to data protection, constitutional rights, rule of law, administrative law, competition and consumer law, and economics. It is important that the design process utilizes a regional lens for sensitivity to political and societal activities (e.g. upcoming or recent elections).

**2. Regulating digital service providers must ensure a high level of protection when it comes to freedom of expression and media freedoms, in line with international standards.**

Specifically, DSA design and implementation should not be used as a process for regulating specific content or types of media (e.g. online media) or ‘users’ but the focus must remain on the processes of content governance. In a similar vein, the DSA should not be weaponized to hinder media freedom in any case, noting regional trends of states undermining media under the guise of combating disinformation.<sup>[24]</sup>

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[23] Daniel Holznagel, Ireland cannot do it alone, Verfassungsblog, 27 April 2021, available at: <https://verfassungsblog.de/dsa-ireland/>

[24] For a similar discussion, see: J. Barata, The Digital Service Act and Its Impact on Freedom of Expression: Special focus on Risk Mitigation Obligations, PLI, 2021, p.19

### **3. Legal certainty and long-term functional and open engagement online must be preserved.**

Vague and open-ended provisions should be avoided at all costs. The recently adopted European Media Freedom Act should be consulted to ensure synchronization.<sup>[25]</sup>

### **4. When it comes to DSA institutional responsibilities, involvement of CSOs is essential. This will also bolster DSC independence and increase public trust.**

CSO involvement is particularly important for the region when it comes to oversight responsibilities. A system of checks and balances (e.g. transparency obligations, accountability mechanisms, citizen participation) must be integrated within the DSA-implementing provisions. This approach would also increase mutual trust among stakeholders in the region.

### **5. The independence of DSA design and enforcement through independent DSCs.**

This can be also achieved through consistent allocation of financial, human and technological resources and capacities. In line with the DSA provision, DSCs in the EU selected institutions have increased their staff with diverse skill sets and requisite knowledge.

### **6. Collaborative regional investigations and approaches to increase intermediaries' liability and accountability.**

In the WB region, the cultural and language similarities also point to regional cooperation when engaging with and providing oversight of platforms as beneficial for regional civil society, as a whole.

### **7. A coordinated, regional approach, led by CSOs.**

With the support of European and international partners, the collective efforts of CSOs will continue to ensure a coordinated, responsible and human rights-centered strategy for the upcoming DSA and DMA alignment process in the region.

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[25] EU Regulation 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act)Text with EEA relevance.

**8. Continue to strengthen systemic cooperation with the European Commission, DSCs, and European professional bodies.**

Effective coordination and stakeholder engagement across the WB region necessitates a constructive dialogue with representatives of the European Commission. While the current efforts on the side of the European Commission provide a solid foundation, advancing this effort requires specific, incremental steps. These steps are crucial to ensure that alignment with the DSA includes robust guarantees and safeguards, essential for cultivating secure and dynamic online ecosystems. Learning with and from European counterparts is essential to that end.

**9. Initiate in-depth and two-directional cooperation with platforms on issues that urgently need addressing in the regional context in line with the DSA due diligence mechanisms.**

As stated in the CSF WB 'Berlin Process' recommendations and confirmed in this study, online platforms should be encouraged to extend their DSA compliance mechanisms to the WB region. This would ensure a unified internal digital market approach across Europe and provide an equal level of protection to all European citizens, including those in candidate countries.



# Part Two: The Western Balkan Country Case Studies

## Country overview: Albania

### The legal framework in place for the implementation of the DSA and DMA

The legal framework in Albania, relevant to the implementation of the DSA and DMA, spans numerous acts. Overall, the country's legal framework complies with international human rights law and has ratified the key related conventions. As a member of the Council of Europe (CoE), and according to the Constitution of Albania, human rights restrictions cannot exceed the limitations provided by the European Convention on Human Rights (ECHR), granting the ECHR a special status within the national legal system. In addition, Albania has ratified the CoE conventions concerning the automatic processing of personal data (Convention 108) and the Cybercrime (Budapest) Convention. It is important to note that the latter has shaped relevant national criminal law legislation.<sup>[26]</sup>

Another catalyst for the country in this regard is the European Union (EU) integration process. In 2020, the EU opened accession negotiations with Albania<sup>[27]</sup>, and since then, harmonization of legislation has been high on the agenda<sup>[28]</sup>. Some recent examples concern amendments to Law No. 9887/2008 on **Protection of Personal Data** for harmonization with the General Data Protection Regulation<sup>[29]</sup>, which are to be adopted in 2024, and amendments to Law No. 97/2013 on **Audiovisual Media** for harmonization with some aspects of the Audiovisual Media Services Directive, concerning participation in the Creative Europe Programme, which was adopted in 2023<sup>[30]</sup>. Amendments are underway to Law No. 9918/2008 on **Electronic**

[26] Global Cyber Security Capacity Centre, Cybersecurity Maturity Level in Albania, 2018, last accessed on 26/4/2024 <https://cesk.gov.al/wp-content/uploads/2020/07/AlbaniaCMMReport.pdf>

[27] European Commission, Albania [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/albania\\_en](https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/albania_en)

[28] Council of the European Union Albania <https://www.consilium.europa.eu/en/policies/enlargement/albania/>

[29] Public Consultation Register, *Draft Law on Personal Data Protection*, 15/06/2022, last accessed on 26/3/2024 <https://konsultimipublik.gov.al/Konsultime/Detaje/472>

[30] European Commission, *Albania 2023 Report*, 8/11/2023 [https://neighbourhood-enlargement.ec.europa.eu/document/download/ea0a4b05-683f-4b9c-b7ff-4615a5fffd0b\\_en?filename=SWD\\_2023\\_690%20Albania%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/ea0a4b05-683f-4b9c-b7ff-4615a5fffd0b_en?filename=SWD_2023_690%20Albania%20report.pdf)

**Communications**, for alignment with the European Electronic Communications Code<sup>[31]</sup>, as are amendments to Law No. 2/2017 on Cybersecurity which aim for closer alignment with the EU Directive on measures for a high common level of cybersecurity across the Union (NIS II)<sup>[32]</sup>.

These laws have connections to the DSA and DMA on different levels. Legislation governing the protection of personal data, the confidentiality of electronic communications, the functioning of electronic communications services, and internet service providers are of crucial importance for the implementation of the DSA when it comes to upholding individuals' rights to privacy, ensuring secure services, equal access, and non-discrimination. Moreover, the Albanian **Law on Audiovisual Media** already covers audiovisual media service providers, including broadcasters, their services, and video distribution platform services. Past government attempts aimed to incorporate regulation of online media within the audiovisual media law, however, were overthrown due to concerns about freedom of expression<sup>[33]</sup>. Cybersecurity legislation on the other hand, despite not being directly related to platform regulation, ensures the resilience of digital ecosystems, mitigating risks associated with cyber threats.

Further navigating the legislative landscape of Albania concerning the digital domain shows several other key pieces of legislation that intersect with the future adoption of the DSA and the DMA.

Law No. 10221/2010 on **Protection from Discrimination** addresses discrimination across various contexts, including the digital sphere, and covers forms of discrimination prevalent in the digital sphere, such as hate speech and harassment. Its provisions are relevant to the DSA's emphasis on combating harmful online content and fostering digital safety.

**The Criminal Code** of Albania encompasses criminal acts involving information and communications technology. Its provisions, which criminalize privacy intrusion and dissemination of discriminatory content, align closely with the DMA's objectives of addressing illegal activities and content online.

Law No. 18/2017 on **the Rights and Protection of the Child**, among other things, protects children in the digital realm, safeguarding against bullying, sexual abuse, and trafficking. This law intersects significantly with the DSA's focus on protecting minors.

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[31] Public Consultation Register, 31/10/2022, *Draft Law on Electronic Communications in Albania*, last accessed on 26/3/2024 <https://konsultimipublik.gov.al/Konsultime/Detaje/540>

[32] Public Consultation Register, 26/4/2023, *Draft Law on Cybersecurity*, last accessed on 26/3/2024 <https://konsultimipublik.gov.al/Konsultime/Detaje/626>

[33] Venice Commission, *Albania - Law No. 97/2013 on Audiovisual Media Law No. 97/2013 with draft amendments adopted on 18.12.2019*, Opinion No. 980 / 2020, 7/2/22020. [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2020\)007-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2020)007-e)

Law No. 10128/2009 on **Electronic Commerce** regulates e-commerce activities and consumer rights in digital transactions. Its provisions concerning consumer privacy and electronic contracts are relevant to the DSA and DMA's objectives in safeguarding consumer interests.

Law No. 9902/2008 on **Consumer Protection**, while covering electronic communications, further reinforces the legal framework for protecting consumer rights in digital transactions, resonating with the goals of the DSA and DMA.

Despite not being directly applicable to digital services, Law No. 9121/2003 on **Protection of Competition** aligns with the DMA's objective of ensuring fair competition. Amendments to the law are currently undergoing consultation; however, they do not cover technology-related aspects<sup>[34]</sup>.

Law No. 35/2016 on **Copyright and Related Rights** impacts online media and content distribution, intersecting with the DSA's provisions concerning unauthorized reproduction or distribution of copyrighted materials.

Law No. 9880/2008 on Electronic Signature is crucial for enhancing trust and security in digital transactions, a goal closely aligned with the DMA's objectives. Similarly, Law No. 107/2015 on Electronic Identification and Trust Services, which regulates electronic identification and authentication, resonates with the DMA.

It is important to note that these pieces of legislation resonate with some aspects of DSA and DMA at the principal level. Most importantly, the groundbreaking legislation, such as the ones on electronic communication and the protection of personal data and audiovisual media content, provides basic legislative infrastructure to ensure human rights aligned implementation of DSA and DMA. In addition, the already established basic rights for individual citizens that are applicable to the digital context, concerning the protection of minors, combating discriminatory practices, ensuring privacy protection, and cybersecurity measures, are all supplemental legislative safety nets. The current legal framework does not pose any requirements for online platforms like search engines, hosting services, or social media platforms, which remain largely unregulated in Albania. However, Albania's adherence to international conventions and the aspiration for European Union integration provide a pathway for the adoption of the DSA and DMA.

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[34] Competition Authority, 9/2/2024, *Draft Law on Protection of Competition*, last accessed on 26/3/2024 <https://caa.gov.al/wp-content/uploads/2024/02/Projektligj-Janar-2024.pdf>

## Albania's prospects of harmonization with DSA and DMA

The 2023 EU Commission Report<sup>[35]</sup> highlighted that Albania should enhance efforts to align with the DSA and DMA. The issue of platform regulation was also addressed, emphasizing that unregulated and unregistered large information technology platforms exert significant influence on the online advertising market<sup>[36]</sup>.

Furthermore, the need to ensure transparency in online electoral targeting and advertising was underscored in the OSCE/ODIHR report on Albania's 2023 elections<sup>[37]</sup>. Likewise, the European Network of Election Monitoring Organizations (ENEMO) noted the lack of provisions within the Electoral Code on online and social media political advertising<sup>[38]</sup>.

A policy emphasis on digitalization is evident within the government, with a growing dependence on e-services. However, the Digital Agenda of Albania 2022-2026<sup>[39]</sup> prioritizes aspects such as digital governance, accessibility, and privacy of e-services for both businesses and citizens, as well as promoting digital education and literacy.

**The National Plan on European Integration (NPEI) 2022-2024**, under Chapter 10, "Information Society and Media", mentioned the adoption of EU acquis related to digital development, digital platforms, and artificial intelligence, which necessitates a detailed analysis due to its impact on several sectors and institutions<sup>[40]</sup>.

The next NPEI, 2023-2025, mentioned the DSA and DMA explicitly, highlighting them as relevant newly adopted acts in the area of digital development. However, there was no relevant commitment to their adoption within the given timeframe<sup>[41]</sup>.

[35] European Commission, *Albania 2023 Report*, 8/11/2023 [https://neighbourhood-enlargement.ec.europa.eu/document/download/ea0a4b05-683f-4b9c-b7ff-4615a5fffd0b\\_en?filename=SWD\\_2023\\_690%20Albania%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/ea0a4b05-683f-4b9c-b7ff-4615a5fffd0b_en?filename=SWD_2023_690%20Albania%20report.pdf)

[36] Ibid.

[37] OSCE, *Albania Local Elections 14 May 2023 Final Report*, 29/9/2023 <https://www.osce.org/files/f/documents/d/d/553972.pdf>

[38] ENEMO, *Statement of Preliminary Findings and Conclusions*, 26/4/2021 <https://enemo.org/storage/uploads/file-manager/ENEMO25April2021Albaniaparliamentaryelections-StatementofPreliminaryFindingsandConclusions.pdf>

[39] Decision of Council of Ministers No. 370, dated 1.6.2022 on the Approval of Intersectoral Strategy Digital Agenda of Albania and Action Plan 2022-2026 <https://akshi.gov.al/wp-content/uploads/2022/06/vendim-2022-06-01-370-Agenda-Digjitale-e-Shqiperise-22-26-dhe-plani-i-veprimit.pdf>

[40] National Plan on European Integration 2022-2024 <https://www.drejtësia.gov.al/wp-content/uploads/2022/04/PLANI-KOMB%C3%8BTAR-P%C3%8BR-INTEGRIMIN-EVROPIAN-2022-2024.pdf>

[41] National Plan on European Integration 2023-2025 <https://www.drejtësia.gov.al/wp-content/uploads/2023/03/PLANI-KOMB%C3%8BTAR-P%C3%8BR-INTEGRIMIN-EVROPIAN-2023-2025.pdf>

**The General Analytical Program of Acts (GAPA) for 2024**, which encompasses of laws and bylaws planned to be adopted by the government within the year, makes no reference to the DSA and DMA<sup>[42]</sup>, indicating it is not a priority in the near future.

However, both policy documents, NPEI and GAPA, indicate the government's plans for adopting some documents affecting the digital domain, which could also be of interest for the future adoption of the DSA and DMA. For example, in the NPEI 2024, the government committed to making amendments to the consumer protection legislation, covering digital contracts and services, as well as adopting the EU 2030 Digital Compass, the European way for the Digital Decade<sup>[43]</sup>, which aims, among other things, to ensure digital rights, including the right to privacy, freedom of expression, and child and consumer rights. Furthermore, GAPA 2024 commits to the adoption of a methodology and technical standards for the use of artificial intelligence.

According to the NPEI, the institutions responsible for Chapter 10 are the **Ministry of Infrastructure and Energy (MIE) and the National Agency for the Information Society (NAIS)**, while other contributors include independent institutions and line ministries. Under the course of this research, 13 Freedom of Information (FOI) requests were submitted to these institutions, including the Prime Minister's Office and MIE, Ministries covering EU integration, finance, culture, innovation, and independent institutions whose competencies relate directly or indirectly to the DSA or DMA. The FOI questions were standardized and covered current legislative initiatives or analysis by institutions on DSA and DMA adoption; engagement and role of the given institutions in the process; training or other initiatives related to DSA and DMA; involvement of civil society in these processes; the prospective Digital Services Coordinator; and regional prospects of approaching the DSA and DMA.

While none of the institutions addressed these points, based on the information they provided, it can be concluded that there are currently no active legal initiatives in progress aimed at adopting the DSA and DMA. Specifically, **the Prime Minister's Office and NAIS responded** to the request by providing the public link to NPEI, which was already referenced in the FOI<sup>[44]</sup>. **The Ministry of Interior** broadly informed us that it was conducting a legal analysis on countering cyberbullying, *without making*

[42] Official Journal of Albania, *Decision of the Council of Ministers no. 790, dated 28.12.2023 For the approval of the general analytical program of draft acts that will be presented for consideration to the Council of Ministers during 2024*, <https://qbz.gov.al/eli/fz/2024/1/5609d1f0-80dd-4128-84e2-7e33852535f1;q=Vendim%20i%20K%C3%ABshillit%20t%C3%AB%20Ministrave%20nr.%20790,%20dat%C3%AB%2028.12.2023>, 3/1/2024

[43] Journal of the European Union, *2030 Digital Compass: the European way for the Digital Decade*, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2021:118:FIN>

[44] Response provided on 4/3/2024, by the PMO; and on 11/4/2024 by NAIS, in response to FOI requests.

any references to the DSA<sup>[45]</sup>. However, through public statements, the Ministry of Interior has informed the public of its involvement in a working group working on amendments to the Criminal Code. Their contribution focuses on cyberviolence and crimes against minors. In addition, this ministry has acknowledged their participation in an evaluation and impact assessment of the DSA and DMA's implementation in Albania<sup>[46]</sup>. Regarding the latter, they underscored the necessity for collaborative efforts involving civil society, media, academia, private enterprises, and internet service providers, alongside cross-institutional and international cooperation<sup>[47]</sup>.

The Ministry of Finance<sup>[48]</sup>, Ministry of Justice<sup>[49]</sup>, and Ministry for Europe and Foreign Affairs<sup>[50]</sup> forwarded their FOIs to MEI, Ministry of Innovation, Economy and Culture (MIEC), and NAIS - stating they were not the competent authorities on the matter.

The MEI informed<sup>[51]</sup> us that, due to the cross-cutting nature of the DMA and DSA, the interinstitutional working group for EU Integration had agreed that an analysis was needed to delineate the areas and institutions concerned. This analysis aimed to ascertain how the provisions outlined in the DSA and DMA align within the broader legal and regulatory framework of the country. Following the finalization of the analysis, MEI stated there were plans to amend the NPEI for 2025-2027 to incorporate deadlines for transposing these acts; presumably, this opportunity will be seized to introduce more explicit plans regarding the alignment with the DSA and DMA.

Additionally, the MEI highlighted that in 2023, a study focusing on intellectual property matters related to the DSA and DMA was conducted by the Copyright Directorate of MIEC in the framework of the Albania-Switzerland Intellectual Property Project (ALSIP). Furthermore, they informed us that a workshop on Technical Assistance and Information Exchange of the European Commission (TAIEX) was held in Tirana on June 29, 2022, focused on the EU legislation on audiovisual services with a specific focus on the regulation of online platforms. During this TAIEX workshop, a presentation was delivered covering the

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[45] Information provided on 18/3/2024, by the Ministry of Interior in response to FOI request.

[46] Euronews (2024) Interview with deputy minister of interior and others, <https://www.youtube.com/watch?v=7FV27NNXmi8>

[47] Euronews (2024) Interview with deputy minister of interior and others, <https://www.youtube.com/watch?v=7FV27NNXmi8>

[48] Request forwarded by the Ministry of Finance to MEI on 28/2/2024.

[49] Request forwarded by the Ministry of Justice to MIEC and NAIS on 28/2/2024.

[50] Request forwarded by the Ministry for Europe and Foreign Affairs to MEI on 27/2/2024.

[51] Information provided on 27/3/2024, by MIE in response to FOI request.

anticipated adjustments concerning the implementation of DSA and DMA. Participants included the Audiovisual Media Authority (AMA), MIE, the Copyright Directorate of MIEC, and other institutions. It should be noted that the MIEC<sup>[52]</sup> and the State Minister leading EU negotiations<sup>[53]</sup> were the only institutions that failed to respond to the FOIs.

The majority of the institutions contacted in this research process did not address the question on the prospects for a regional approach towards harmonization with DSA and DMA, while the Regional Cooperation Council (RCC) confirmed they did not have any ongoing initiatives in this regard. However, RCC informed us that a workshop of the TAIEX of the European Commission with the institutions of the Western Balkans focused on these two acts was planned for the spring of 2024<sup>[54]</sup>. Moreover, according to the MIE<sup>[55]</sup>, the discussions around **the Common Regional Market 2021-2024 Action Plan**<sup>[56]</sup>, could be an avenue for discussing a regional approach towards DSA and DMA adoption. This action plan is nearing finalization, and one of its key areas is the integration of the Western Balkans into the pan-European digital market.

When it comes to independent institutions, the **AMA** and the **Competition Authority** confirmed being informed about the DSA and DMA<sup>[57][58]</sup>. The Competition Authority also noted to have planned staff training on digital markets and services, while AMA was included in the expert group of institutions supporting the activities of a newly formed ad hoc parliamentary committee on disinformation<sup>[59]</sup>. Other independent institutions, like the **Information and Data Protection Commissioner** (IDP), confirmed not being informed or involved in DSA and DMA-related initiatives<sup>[60]</sup>, while the **Authority for Electronic Communications and Postal Services (AECPS)** solely highlighted that they are not responsible for reporting on DSA and DMA<sup>[61]</sup>. Another independent institution, **the Elections Commission**, confirmed having recommended amendments to the Electoral Code to broaden the scope of the law, including the monitoring of electoral campaigns on social media<sup>[62]</sup> - an issue that also concerns the transparency of political advertising on online social media platforms and online media.

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[52] FOI submitted to MIEC on 24/2/2024.

[53] FOI submitted to State Minister Leading EU Negotiations on 6/3//2024.

[54] Written comment provided to the author by Milena Jocić Tanasković, Expert on Digital Connectivity, Regional Cooperation Council on 25/3/2024.

[55] Information provided on 27/3/2024, by MIE in response to FOI request.

[56] Common Regional Market 2021-2024 Action Plan <https://www.rcc.int/pages/143/common-regional-market>

[57] Information provided on 5/3/2024, by AMA in response to FOI request.

[58] Information provided on 1/3/2024, by the Competition Authority in response to FOI request.

[59] Parliament of Albania 03/04/2024 <https://www.parlament.al/lajme/28cfbacc-22bd-411e-bae1-de66c659ca22>

[60] Information provided on 28/2/2024, by IDP in response to FOI request.

[61] Information provided on 18/3/2024, by AECPS in response to FOI request.

[62] Information provided on 11/3/2024, by Elections Commission in response to FOI request.



**Independent human rights institutions**, on the other hand, despite their limited mandates and capacities in the digital domain, have shown initiative in addressing citizens' concerns about rights' violations in the digital sphere but are currently not genuinely involved in the noted DSA and DMA alignment efforts.

**The Ombudsperson** has raised the issue of discrimination faced by citizens in accessing e-public services due to limited access to the internet, technology or equipment, and digital literacy. In addition to issues of access, they addressed privacy as well as transparency and accountability concerns. Not having a mandate over the private sector, the Ombudsperson has engaged in a study focused on protection of human rights in the context of digitalization of public services in Albania<sup>[63]</sup>. They have also reported concerns on children's unequal opportunities and access to e-learning<sup>[64]</sup>.

On the other hand, **the Anti-Discrimination Commissioner** has addressed complaints regarding accessibility of e-public services, identifying instances of discrimination originating from public authorities<sup>[65]</sup>. They have also engaged in a study addressing the issue of hate speech, including when it occurs online<sup>[66]</sup>. In several decisions, they have identified discrimination in the form of online harassment or hate speech based on gender, sexual orientation, gender identity, race, and disability where recommendations or administrative sanctions were issued<sup>[67]</sup>. However, insufficient technical capacity has sometimes affected their capability to conduct thorough administrative investigations, for example, when dealing with electronic evidence<sup>[68]</sup>.

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[63] Presentation during a public activity followed by the author, held in Tirana by the Ombudsperson on 29/2/2024

[64] Ombudsperson of Albania, *Recommendations on the educational system 2020*, <https://www.avokatipopullit.gov.al/sq/articles/activities/arsimi/rekomandime-mbi-sistem-in-arsimor-2020-540/>

[65] Decision No. 179 , Dated 12/09/ 2023 of the Commissioner for Protection from Discrimination against Agency of State Cadastre. <https://www.kmd.al/wp-content/uploads/2023/09/Vendim-nr.-179-date-12.09.2023-R.G-kunder-Agjencise-Shteterore-te-Kadastres-Diskriminim-ndersektorial-dhe-te-terthorte.pdf>

[66] Council of Europe, *Beyond definitions: A call against hate speech in Albania* <https://rm.coe.int/beyond-definitions-eng/1680a464b2>, November 2021

[67] Institute for Democracy and Mediation, *Bridging the Gap Between Cyber Policy Fragmentation and Human Rights*, 23/11/2022 <https://idmalbania.org/bridging-the-gap-between-cyber-policy-fragmentation-and-human-rights/>

[68] Ibid.



Furthermore, in April 2024, an **Ad Hoc Parliamentary Committee on Disinformation** was established<sup>[69]</sup>. Its primary focus is to coordinate and oversee all national institutional efforts aimed at combating disinformation and foreign interference in democratic processes in Albania. Its mandate includes conducting analysis and proposing administrative measures and legal amendments to: address disinformation and foreign influences during elections; enhance platform accountability in the dissemination of news through unauthentic means; ensure algorithmic transparency in filtering and content removal processes; and ensure shutting down accounts engaged in coordinated unauthentic activities or other illicit actions undermining democratic processes or promoting hate speech. The Committee will also conduct evaluations on transparency in electoral campaign financing and disclosure of financing sources for all entities and platforms providing public information services or similar activities, including online and traditional media. Another Ad hoc Parliamentary committee on Electoral Reform included in its 2024 work plan the regulation of electoral campaigns on electronic media<sup>[70]</sup>. These parliamentary initiatives on combating disinformation and regulating electoral campaigns on social and online media suggest a territory for the Parliament to engage with matters that resonate with the DSA and DMA.

Although Albania has not yet taken active legislative steps to align with the DSA and DMA, the country's awareness of the importance of these acts is evident through various directly or indirectly related policy measures, institutional acknowledgments, and parliamentary engagements. Such signals lay the foundation for future alignment efforts.

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[69] The request for the establishment of this committee was submitted by socialist ruling party members of Parliament, and approved through a rapid and not consulted process in April 2024. It drew upon references such as the (unpublished) memorandum of understanding signed on 15/2/2024 by Albania's Minister for Europe and Foreign Affairs, and US Secretary of State on the manipulation of foreign state information and disinformation, the joint declaration of the South East Europe Summit on Ukraine, Resolution 2024/2548 of the European Parliament on accusations of Russian interference in the democratic processes of the EU, and the 2020 decision of the European Parliament on the establishment of a special committee for foreign interference in all democratic processes in the EU, including disinformation. See Parliament of Albania 03/04/2024 <https://www.parlament.al/lajme/28cfbacc-22bd-411e-bae1-de66c659ca22>; <https://www.parlament.al/struktura/b4b8eede-3161-492d-8942-551da877cece>

[70] Parliament of Albania, *Working Calendar of the Special Committee on the Electoral Reform*, <https://kuvendiwebfiles.blob.core.windows.net/webfiles/202401261343456717KALENDARI%20I%20RISHIKUAR%20I%20PUNIMEVE%20TE%CC%88%20KOMISIONIT%20TE%CC%88%20POSAC%CC%A7E%CC%88M%20PE%CC%88R%20REFORME%CC%88N%20ZGJEDHORE.pdf>

## Civic actors' initiatives addressing aspects of the DSA and DMA

Shedding insight into the intersections of cybersecurity and human rights in Albania, think tanks like the **Institute for Democracy and Mediation (IDM)** have published research documenting rights' violations and examining legal gaps in the areas of freedom of expression, right to privacy, freedom of assembly, and protection from discrimination<sup>[71]</sup>. Their research and advocacy efforts address issues of gender and cybersecurity, with a focus on digital rights violations against women human rights defenders. Among other issues, their studies have highlighted the responsibility of online platforms regarding illegal or harmful content and algorithmic transparency<sup>[72]</sup>.

Child safety online is another area of advocacy for Albanian civil society organizations. The **Children's Human Rights Centre of Albania (CRCA)** manages two online platforms that are used to report digital violations against children, report harmful content, and cooperate with law enforcement, platforms, and service providers in this realm. CRCA also publishes the data gathered through their reporting platforms, highlighting the need to safeguard children and other targeted groups online<sup>[73]</sup>.

On the other hand, media organizations like **the Balkan Investigative Reporting Network (BIRN)** engage in monitoring political advertisements on social media during electoral campaigns<sup>[74]</sup>. In their publications, they have also covered issues of online disinformation<sup>[75]</sup>, while also conducting annual monitoring of digital rights violations in Southeast Europe, covering Albania as well<sup>[76]</sup>. At the regional level, BIRN confirmed being invested in following developments related to the DSA and the European Media Freedom Act<sup>[77]</sup>.

International organizations such as **International Institute for Democracy and Electoral Assistance (IDEA)** work with the Central Election Commission and civil society on

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[71] Institute for Democracy and Mediation, *Bridging the Gap Between Cyber Policy Fragmentation and Human Rights*, 23/11/2022

[72] Institute for Democracy and Mediation, *The freedom to defend rights in online spaces: Challenges for Women Human Rights Defenders in Albania*, 4/10/2023 <https://idmalbania.org/study-report-the-freedom-to-defend-rights-in-online-spaces-challenges-for-women-human-rights-defenders-in-albania/>

[73] iSIGURT.al, *National Reports on Online Safety in Albania*, 7/2/2024 <https://www.crca.al/en/isigurt-al-publishes-two-national-reports-on-online-safety-in-albania/>

[74] Reporter.al, *Political parties and candidates spent USD 113,000 on Facebook ads*, 14/04/2021 <https://www.reporter.al/2021/04/14/partite-politike-dhe-kandidatet-kane-shpenzuar-113-mije-usd-ne-reklama-ne-facebook/>

[75] SciDev/Birn Albania, *Combating Disinformation in Albania*, 27/8/2023

<https://scidevcenter.org/2023/08/27/combating-disinformation-in-albania-an-initiative-by-birn-albania-scidev/>

[76] Balkan Investigative Reporting Network, *Digital Rights Violations Annual Report 2022-2023*, December 2023 <https://birn.eu.com/wp-content/uploads/2023/12/01-BIRN-Digital-Rights-Violations-Annual-Report-2022-2023.pdf>

[77] Interview conducted by the author on 27/4/2024 with Kristina Voko, Director of Birn Albania.

cybersecurity in the digitalization of elections and the transparency of online campaigning. They have published a study on models of digital reporting and disclosure of political finance, which serves as a reference for future changes in Albanian electoral legislation<sup>[78]</sup>.

Meanwhile, the issue of political advertising is also addressed by **the National Democratic Institute (NDI in Albania)**. They have facilitated informative and exchange sessions involving Meta/Facebook, the Central Election Commission, local election watchdogs, and CSOs<sup>[79]</sup>. NDI is advocating with the Parliament for the regulation of political and electoral ads on social media. This includes defining social media advertising for the purposes of party and election finance regulation, as well as imposing requirements on social media platforms for documentation of paid political advertisements and mandating the identification of the payment source.

**Science & Innovation for Development (SciDev)** is another local organization that works on digitization and media, and conducts research, capacity-building, and awareness-raising activities which target youth, local media, and journalists. They have organized a national digital rights festival<sup>[80]</sup>, and published comprehensive studies on online disinformation<sup>[81]</sup> and citizens' personal data violations<sup>[82]</sup>.

When it comes to **the EU Delegation to Albania**, they did not manage to provide a response regarding their involvement in initiatives related to DSA and DMA, including support for Albanian civil society and media or assistance to the government in adopting these acts.

**Academia** is another key actor in this domain, and some EU law academics have already started tackling the DMA in their research endeavors. One of these ongoing works includes a study on competition law in the Western Balkans, which also tackles DMA-related concerns<sup>[83]</sup>. In other publications, Albania's approach to the transposition of EU acquis in the field of competition law has also been scrutinized<sup>[84]</sup>. Moreover, some universities, such as Epoka University, have introduced dedicated subjects on "Law and Technology" while also covering digital market issues within competition law<sup>[85]</sup>.

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[78] <https://www.idea.int/sites/default/files/publications/models-of-digital-reporting-disclosure-of-political-finance-albania.pdf>

[79] Interview conducted by the author on 10/3/2024, with Sabina Babameto, Program Officer, NDI Albania.

[80] SciDev/SMART Balkans, *National Digital Rights Festival*, 4/9/2023 <https://smartbalkansproject.org/smart-news/scidev-national-digital-rights-festival/>

[81] SciDev/Birn Albania, *Combating Disinformation in Albania*, 27/8/2023

[82] SciDev, *Working Paper Mapping Personal Data Violations in Albania: A short retrospective on massive breaches in the country, 2022*

[83] Interview held by the author on 28/2/2024, with Gentjan Skara, Lecturer of EU Law and Competition Law, Department of Law, Epoka University

[84] Maastricht University, *Transposition of the ECN+ directive in Albania: the mistaken approach*, 20/5/2022

[85] Interview held by the author on 28/2/2024, with Gentjan Skara, Lecturer of EU Law and Competition Law, Department of Law, Epoka University

In the words of Gentjan Skara, Lecturer of EU Law and Competition Law, Department of Law, Epoka University: “These [digital] issues demand a broader perspective of the law beyond traditional views. This is why there are few actors involved, as academia and civil society tend to focus on more conventional areas of expertise. This makes the collaboration among engaged actors even more essential<sup>[86]</sup>.”

Despite a certain level of engagement of civic actors in this domain, data shows their impact on policy making in the area of cybersecurity and digitalization is constrained. This limitation stems from authorities’ lack of transparency or failure to include civic actors in public consultation processes, which are widely formal exercises<sup>[87]</sup>. In this context, there is a recognized need to bridge the divide between cybersecurity governance and human rights concerns in the country<sup>[88]</sup>.

Existing research and data collected by non-public actors on digital rights violations, which also highlight the importance of platform regulation, could be used by policymakers to begin addressing this gap. The limited policy impact of civic actors is sometimes also related to insufficient technical capabilities and resources<sup>[89]</sup>. Strengthening support and capacities of the civic sector in this domain is an underscored need for the sector to be able to make meaningful contributions to DSA and DMA-related issues.

## Prospective Digital Service Coordinator - concerns and recommendations

The Digital Service Coordinator’s (DSC) authority outlined in the DSA emphasizes the necessity of operating independently from both private and public entities, including the government. While the DSA provides member states with the option of integrating the DSC into an existing authority, this approach might not be suitable for Albania given the institutional infrastructure. Currently, the government agency responsible for digital services, NAIS, operates under the subordination of the Prime Minister, thus not fulfilling the criterion of independence. The same counts for the Authority on Electronic Certification and Cybersecurity, which operates under the subordination of the Prime Minister, and the Commission for Consumer Protection, the functioning and funding of which are defined by the Council of Ministers.

[86] Interview held by the author on 28/2/2024, with Gentjan Skara, Lecturer of EU Law and Competition Law, Department of Law, Epoka University

[87] Institute for Democracy and Mediation, *Research Report: A Decade of Public Consultation Law in Albania: Call for Reform*, 29/9/2023 <https://idmalbania.org/research-report-a-decade-of-public-consultation-law-in-albania-call-for-reform/>

[88] Institute for Democracy and Mediation, *Bridging the Gap Between Cyber Policy Fragmentation and Human Rights*, 23/11/2022

[89] Institute for Democracy and Mediation, *Working Paper on Safeguarding Digital Democracy: The Evolving Role of Non-Public Actors in Albania*, April 2024.

The State Police, which has dedicated units on countering cybercrime, has relevant experience in this domain; nevertheless, it operates within the Ministry of Interior. It has demonstrated limited capacities and effectiveness in pursuing investigations, particularly in cases of cyberviolence against women and LGBTI+, which see high levels of impunity<sup>[90]</sup>. Challenges arise from the criminal legislation itself, which does not cover or clearly define these violations and lacks authority over online platforms.

Additionally, relevant independent bodies lack institutional experience on digital matters due to their historically limited mandates that exclude the digital domain. This includes the Ombudsperson, which does not have authority over the private sector; the Audiovisual Media Authority, which does not cover online media, only video distribution platform services (as of 2023); and the Competition Authority, which does not cover the digital domain. Regarding the latter, Gentjan Skara, Lecturer of EU Law and Competition Law, Department of Law, Epoka University, highlighted that over the past few years, it has had the opportunity to address cases where law and technology intersect and affect the digital market, but has refrained from doing so due to these limitations of competencies<sup>[91]</sup>.

Furthermore, the Anti-Discrimination Commissioner, despite having the competence to cover discrimination that takes place online, struggles with resources and capacity when conducting investigations involving digital evidence and related matters<sup>[92]</sup>.

Other institutions, highly relevant to certain aspects of the DSA, hold already extensive mandates, such as the IDP, which oversees personal data protection, the right to information, public consultations, as well as open data and reuse of public sector information.

Hence, the **establishment and capacitation of a dedicated independent institution** from the ground up to fulfill this role would be one of the options to consider, given the existing landscape. Although it may not seem feasible due to the resources such a process would demand, drawing from the experiences of EU countries (like France), the significant changes made to the legal frameworks and competencies of existing institutions resemble the establishment of a new entity.

If establishing a new dedicated institution is not deemed an option, the Authority for Electronic Communications and Postal Services (AECPS) would be the most feasible choice for the role of the DSC in Albania, due to being the only independent body with relevant institutional experience in the digital domain. This involves competencies such as ordering the blocking

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[90] Institute for Democracy and Mediation, *The freedom to defend rights in online spaces: Challenges for Women Human Rights Defenders in Albania*, 4/10/2023

[91] Interview held by the author on 28/2/2024, with Gentjan Skara, Lecturer of EU Law and Competition Law, Department of Law, Epoka University

[92] Institute for Democracy and Mediation, *Bridging the Gap Between Cyber Policy Fragmentation and Human Rights*, 23/11/2022

or removal of illegal content or domains, overseeing electronic communications services, registering hosting services, monitoring the activities of internet service providers, and supervising compliance with e-commerce law for service providers in the area of information society. However, the institution lacks experience in the field of human rights.

In the scenario when AECPS is assigned the role of the DSC, it is of utmost importance for the other above-mentioned **authorities to serve as competent authorities** within their areas, e.g., Anti-Discrimination Commissioner on discrimination-related matters; IDP on privacy and data protection; Police on illegal content; Competition Authority on DMA-related matters; Elections Commission on political advertising and related concerns, etc.—similar to what has been done in France. When designing the DSC, the definition and division of competencies between the DSC and competent authorities must be clearly provided, as well as inter-institutional coordination mechanisms, to avoid overlaps or uncovered areas.

Generally speaking, and considering the democratic infrastructure in Albania, challenges arise due to the prevailing strong executive powers, leading to a situation where other branches of power are overshadowed. One of the side effects concerns limited parliamentary oversight of the executive branch, an issue also noted by the EU Commission<sup>[93]</sup>. As a result, the influence of the executive branch has sometimes led to the election of government associates as heads of independent institutions by Parliament. In 2021, international media organizations raised concerns about the election of a government ally to head the AMA<sup>[94]</sup>. The 2022 EU Commission Report also highlighted that the independence of some AMA members has been questioned due to their political links<sup>[95]</sup>. The same report underlined that the chair of another independent institution, that of the Competition Authority, was elected by the Parliament without conducting a hearing session with the candidate<sup>[96]</sup>. In 2023, the EU Commission noted the delays and politicization of the election of the new Ombudsperson and the Anti-Discrimination Commissioner, highlighting how they weaken these independent institutions<sup>[97]</sup>.

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[93] European Commission, *Albania 2023 Report*, 8/11/2023

[94] Resource Center on Media Freedom in Europe, *Albania: concern after government ally elected to head the Audiovisual Media Authority*, 14/07/2021 <https://www.rcmediafreedom.eu/News/Albania-concern-after-government-ally-elected-to-head-the-Audiovisual-Media-Authority>

[95] European Commission, *Albania 2022 Report*, 12/10/2022 8/11/2023 [https://neighbourhood-enlargement.ec.europa.eu/document/download/dde85556-8061-41f3-ba0c-5e921158bc53\\_en?filename=Albania%20Report%202022.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/dde85556-8061-41f3-ba0c-5e921158bc53_en?filename=Albania%20Report%202022.pdf)

[96] Ibid.

[97] European Commission, *Albania 2023 Report*, 8/11/2023

Thus, considering the democratic infrastructure in the country is crucial when it comes to the prospective DSA. This requires guaranteeing **institutional independence**, achieved through parliamentary approval by a qualified majority for appointments, along with ensuring independence in financial administration and hiring procedures.

Furthermore, it is essential to **acknowledge and tackle the overarching constraints** stemming from **institutional expertise** in the digital and human rights realms and guarantee **sufficient financial resources** and **technical capabilities**.

Another crucial step would entail adopting **a multi-stakeholder approach** (e.g. the case of Germany<sup>[98]</sup>) toward implementing the DSA and engaging civil society, media, academia, and expert communities, alongside designated competent authorities. This approach facilitates more robust **checks and balances** and promotes transparency. If embraced, such a model should draw lessons from and surpass previous experiences in Albania that have resulted in the creation of barely operational or impactful multi-stakeholder advisory bodies to the government, such as the National Council on Civil Society<sup>[99]</sup>.

## Transposition and implementation approach - concerns and recommendations

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Experts expressed a perception of a lack of prioritization in the government's approach towards adoption of the DSA and DMA, as none of the interviewees saw it as being high on the agenda. Their reasoning stemmed from the complexity and novelty of these acts, even within the EU itself, as well as Albania's status as a relatively small digital market<sup>[100]</sup>. Another argument highlighted how the lack of prioritization was evidenced in the inaction to regulate online political advertising, a concern that is often overshadowed by other pressing issues surrounding elections in the country<sup>[101]</sup>. Similarly, concerns about foreign malign influences and disinformation in elections, which have served as catalysts for action in other countries, were considered relatively insignificant within the context of Albania, despite being present<sup>[102]</sup>. This is also confirmed by independent studies, which show that disinformation

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[98] Euroactiv, *Digital Services Act: Germany proposes creation of advisory board*, 9/5/2023 <https://www.euractiv.com/section/platforms/news/digital-services-act-germany-proposes-creation-of-advisory-board/>

[99] European Union, *Screening Report Albania*, 20/07/2023 [https://neighbourhood-enlargement.ec.europa.eu/document/download/b83313ef-48c5-4bef-9f00-f5d66509572e\\_en?filename=AL%20Cluster\\_1%20Draft%20screening%20report\\_external%20version.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/b83313ef-48c5-4bef-9f00-f5d66509572e_en?filename=AL%20Cluster_1%20Draft%20screening%20report_external%20version.pdf)

[100] Interview held by the author on 28/2/2024, with Gentjan Skara, Lecturer of EU Law and Competition Law, Department of Law, Epoka University

[101] Interview conducted by the author on 27/4/2024 with Kristina Voko, Director of Birn Albania.

[102] SciDev/Birn Albania, *Combating Disinformation in Albania*, 27/8/2023 <https://scidevcenter.org/2023/08/27/combating-disinformation-in-albania-an-initiative-by-birn-albania-scidev/>



is more of a “home-grown product” in Albania rather than driven by external forces.<sup>[103]</sup> Nevertheless, the recently established ad hoc parliamentary committee on disinformation and other forms of foreign interference in democratic processes, addressed in previous sections, suggests a potential for the Parliament to engage with these matters in the near future, intersecting with the DSA-related matters.

Moreover, instances arose where political figures, including the Prime Minister and the Minister of Interior, engaged with representatives from one of the major online platforms (TikTok) regarding concerns over cyber violence and content moderation in Albanian.<sup>[104][105]</sup> While the results remain unclear and could raise justified concerns over the lack of involvement of other independent human rights authorities, purportedly, these endeavors seek to enhance platform engagement and responsiveness to Albanian authorities in instances of criminal violations. However, relying solely on platform goodwill appears insufficient, emphasizing the need for prioritizing regulation.

Among the concerns about future adoption shared during the interviews, the argument of a lack of capacity prevailed. A representative of a media organization exemplified this by pointing out the evident confusion among high-level officials between the terms “online platform” and “online media” in their public statements<sup>[106]</sup>. Another expert highlighted the absence of a direct translation for the term “gatekeepers” in Albanian, indicating the lack of use of DMA/DSA terminology<sup>[107]</sup>. The expert further stressed that the overall need for strong capacity and independence also became evident in the cases of massive personal data leaks in Albania and cyberattacks faced by the government in the near past. It is recommended that efforts be directed towards building capacities among all relevant authorities to effectively address challenges arising in the digital context.

Another crucial area of concern regards safeguarding fundamental rights, particularly freedom of expression. Whenever discussions about disinformation, cyber violence, and digital rights violations on social media platforms arise, governmental officials tend to redirect the conversation toward regulating online media instead of online platforms,

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[103] Resilience Project Hate Narratives and Disinformation in the Online Media in Albania, 2021 <https://www.institutemedia.org/wp-content/uploads/2021/06/Resilience-research-publication-2-Albania-English.pdf>

[104] Prime Minister of Albania, communication through Meta/Facebook platform, 16/2/2024 <https://www.facebook.com/100044570103558/posts/950566393105689/>

[105] Euronews (2024) Interview with deputy minister of interior and others, <https://www.youtube.com/watch?v=7FV27NNXmi8>

[106] Interview conducted by the author on 27/4/2024 with Kristina Voko, Director of Birn Albania.

[107] Interview held by the author on 28/2/2024, with Gentjan Skara, Lecturer of EU Law and Competition Law, Department of Law, Epoka University



also suggesting criminal penalties for online media<sup>[108]</sup>. Apart from being unfounded and inaccurate, such actions could pose a threat to freedom of speech and media freedoms. Sensitivities, particularly highlighted by the government's controversial 2019 anti-defamation package initiative aimed at regulating online media to combat disinformation and defamation, have underscored this risk. Although the initiative was eventually overturned due to concerns regarding freedom of expression<sup>[109]</sup>, it may still remain a lingering threat. The Albanian Media Council (AMC) echoed this concern and opposed the creation of the ad hoc parliamentary committee on disinformation, addressed in previous sections, in April 2024 by members of the ruling socialist party in Parliament<sup>[110]</sup>. Drawing parallels with the overturned anti-defamation package, the AMC cautioned that this committee could potentially undermine media freedom under the guise of combating disinformation<sup>[111]</sup>. Similarly, a representative from Safe Journalists Network voiced skepticism about the committee's intentions, expressing apprehension about its potential to stifle opposition, critics, and independent voices, by introducing legal amendments affecting the removal of media content, especially considering its formation only a year before parliamentary elections. They underscored the limited oversight of the government by the parliament, further casting doubt on the credibility of the process<sup>[112]</sup>. A statement by SciDev organization on the matter also highlighted that the decision for the establishment of the committee was rapid, not consulted, and disregarded existing independent research. They expressed concerns about the potential utilization of the committee for the purpose of intimidating or suppressing critical voices and suggested, among other measures, that aligning with the DSA would be a more effective approach to addressing disinformation-related concerns<sup>[113]</sup>.

In the already problematic context of continuous deterioration trends in media freedom in Albania<sup>[114]</sup>, meaningful involvement of media and journalists in the drafting and consultation of any future legal initiatives is paramount to tackling these risks. It should be guaranteed

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[108] Balkan Insight, *Albania's Socialists Accused of Misusing Suicide to Renew Online Censorship Drive*, 2/2/2024 <https://balkaninsight.com/2024/02/02/albanias-socialists-accused-of-misusing-suicide-to-renew-online-censorship-drive/>

[109] Venice Commission, *Albania - Law No. 97/2013 on Audiovisual Media Law No. 97/2013 with draft amendments adopted on 18.12.2019*, Opinion No. 980 / 2020, 7/2/2020.

[110] Albanian Media Council, communication through Meta/Facebook platform, 4/4/2024 <https://www.facebook.com/AlbanianMediaCouncil/>

[111] Ibid.

[112] Citizens Channel Foreign Intervention, *Socialist MPs Approve Ad Hoc Committee on Disinformation*, 4/4/2024 <https://citizens.al/nderhyrje-e-huaj-deputetet-socialiste-miratojne-komision-te-posacem-per-dezinformimin/>

[113] SciDEV, *Statement regarding the special parliamentary committee on disinformation*, 5/4/2024 [https://scidevcenter.org/2024/04/05/scidev-statement-regarding-the-special-parliamentary-committee-on-disinformation/?fbclid=PAAaY92qCSiHZQ9ruN2CLU5P4\\_HLWQ3w\\_hgkDI3cN8GCg1H14I\\_0xXS2swmnA](https://scidevcenter.org/2024/04/05/scidev-statement-regarding-the-special-parliamentary-committee-on-disinformation/?fbclid=PAAaY92qCSiHZQ9ruN2CLU5P4_HLWQ3w_hgkDI3cN8GCg1H14I_0xXS2swmnA)

[114] Reporters Without Borders Staff, "Albania," Reporters Without Borders, April 5, 2024, <https://rsf.org/en/country/albania>.

that measures aimed at combating illegal content and disinformation remain proportional and are not exploited to suppress dissenting voices. In this context, the recently adopted European Media Freedom Act could be considered in parallel to balance these concerns<sup>[115]</sup>.

In addition to freedom of expression, it is important to also consider **concerns regarding privacy rights**, especially in light of the heightened data sharing and transparency requirements imposed on online platforms by the DSA and DMA. This is particularly significant considering the already problematic and weak data protection landscape in the country<sup>[116]</sup>.

In this context, to ensure alignment with human rights standards and the rule of law, **the engagement of non-governmental stakeholders**, including civil society, academia, and independent experts, in addition to the media and journalists, is crucial. This ensures transparency and legitimacy of the process itself and provides the opportunity to balance human rights concerns with those most specialized and acting in the public interest. However, the engagement of these stakeholders must extend beyond the mere consultations during the drafting stage, typically held to tick the box<sup>[117]</sup>; they should have the opportunity to meaningfully contribute and monitor the implementation of the DSA. This could be done by engaging in the capacities of trusted flaggers and vetted researchers, as well as by supporting and representing users and victims of online harm, utilizing legal avenues for complaints or court interventions, and engaging in out-of-court settlement mechanisms facilitated by the DSA.

The private sector within the country should be duly included as well, as the DSA and DMA in particular might indirectly introduce compliance costs for them, potentially resulting in market entry barriers for those struggling to comply while trying to expand to EU markets. In this context, it is important to engage with industry representatives to ensure effective compliance and minimize adverse effects on digital businesses, particularly small or medium enterprises.

The transposition approach is another crucial matter, as it requires a comprehensive analysis of all existing pieces of legislation affected by or related to the DSA and DMA, which are numerous. These laws should be identified and evaluated to establish whether their

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[115] European Parliament legislative resolution of 13 March 2024 on the proposal for the European Media Freedom Act [https://www.europarl.europa.eu/doceo/document/TA-9-2024-0137\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0137_EN.pdf)

[116] SciDev, *Working Paper Mapping Personal Data Violations in Albania: A short retrospective on massive breaches in the country, 2022*

[117] Institute for Democracy and Mediation, *Research Report: A Decade of Public Consultation Law in Albania: Call for Reform, 29/9/2023*

existing provisions need to be repealed, revised, or merged. This country's case study is the first step in this direction. The approach has to address whether the transposition will be done through a comprehensive single bill, which would result in abolishing any related or conflicting provisions in other existing legislation, or through fragmented amendments to different laws. The latter, in particular, will require streamlining efforts to ensure coherence in regulatory approaches.

Since the adoption will affect the roles and competencies of several public institutions highlighted in previous sections, the approach has to address the issue of effectively and clearly decentralizing and dividing competencies among them, avoiding potential conflicts or inefficiencies in enforcement.

Adequate resources are essential for an effective transposition, as past experiences have revealed obstacles in this regard. For example, an EU regulation aimed at tackling competition rule violations through non-contractual damages was inadequately transposed in Albania. Rather than enacting new legislation or amending existing laws, it was implemented via a guideline by the Competition Authority, a method not recognized as proper transposition under EU law as it leaves the previously existing legal provisions<sup>[118]</sup>. Similarly, shortcomings in the transposition process were also identified with the ECN+ Directive<sup>[119]</sup>.

Finally, it is crucial to emphasize that because the DSA focuses on procedures and processes rather than content obligations, it refrains from defining concepts, such as harmful or illegal content. Consequently, different states may establish varying definitions. Given this, independent and effective judicial oversight becomes imperative to prevent states from infringing upon fundamental rights while incorporating DSA-related matters into their national legislation. The lack of effective remedies could undermine the right to due process, and other fundamental rights. Judicial oversight is also crucial when addressing violations occurring during implementation. In this context, national courts, and in particular, constitutional courts play a pivotal role in upholding constitutional human rights standards, and those established by the case law of the European Court of Justice and the European Court of Human Rights.

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[118] Interview held by the author on 28/2/2024, with Gentjan Skara, Lecturer of EU Law and Competition Law, Department of Law, Epoka University

[119] Interview held by the author on 28/2/2024, with Gentjan Skara, Lecturer of EU Law and Competition Law, Department of Law, Epoka University

# Country overview: Bosnia and Herzegovina

## Legislative and institutional framework relevant to the implementation of the DSA

Two laws in particular are relevant in the context of future implementation of the DSA within the BiH legislative framework. **The Law on Electronic Legal and Business Transactions**<sup>[120]</sup>, adopted in 2007, transposed the Directive on Electronic Commerce<sup>[121]</sup>. As such, it deals with information society services, including establishing a limited liability of intermediaries for the information transmitted or stored, as well as the prohibition of the state to impose on providers a general obligation to monitor the information which they transmit or store or to actively seek facts or circumstances indicating illegal activity.

**The Law on Communications**<sup>[122]</sup> was adopted in 2003, and its scope reflects the level of technological development of the communications sector at that time. Consequently, it only covers telecommunications and broadcasting (i.e. radio and television) media. Even though the activities of preparing a new set of laws to replace the Law on Electronic Media and the Law on Electronic Communications began years ago, this process has still not been finished at the time of the drafting of this report.

The Law on Communications establishes the **Communications Regulatory Agency (CRA)** as a converged regulatory authority responsible for both electronic media and electronic communications, with the duty to “promulgate rules on broadcasting and telecommunications and ensure adherence thereto”. It is thanks to such a broadly defined responsibility that the EU documents relevant to the sector could be transposed via secondary legislation. This is primarily the case with the Audiovisual Media Services Directive (AVMSD) and, in particular, its 2018 amendment.<sup>[123]</sup> In 2023, the CRA adopted a set of by-laws implementing the revised AVMSD, including the Rule on Video-sharing Platform Services<sup>[124]</sup>, which extends the CRA’s remit to video-sharing platform services under BiH jurisdiction. Another CRA rule relevant to the scope of DSA is the Rule on Internet Service Providers (ISPs)<sup>[125]</sup> which, among others, prohibits ISPs from restricting access to

[120] Law on Electronic Legal and Business Transactions, [Microsoft Word - Zakon o elektronskom pravnom i poslovnom prometu-BO 88 07.doc \(mkt.gov.ba\)](#)

[121] Directive 2000/31/EC, [EUR-Lex - 32000L0031 - EN \(europa.eu\)](#)

[122] Law on Communications of Bosnia and Herzegovina, [Microsoft Word - Zakon o komunikacijama-BO 31 03.doc \(mkt.gov.ba\)](#)

[123] Directive 2018/1808, [L\\_2018303EN.01006901.xml \(europa.eu\)](#)

[124] Rule 96/2023 on Video-sharing Platform Services, [5370e55e-9aef-498a-9150-46c155f05190.pdf \(rak.ba\)](#)

[125] Rule 60/2012 on the conduct of the activity of Internet Service Providers, <https://docs.rak.ba//articles/2fe89b9f-b2c6-4088-b016-63cde7acae34.pdf>

publicly available content and services offered on the Internet, unless found to be harmful and illegal on the basis of a special regulation or decision of the competent institution in Bosnia and Herzegovina (concerning, e.g. child pornography, illegal online gambling, illegal acquiring of personal information, threat to public security, etc.). In practice, this would mean that the CRA could order the ISP to remove or disable access to a website or other content, but only upon receiving a legally binding decision by the competent authority (i.e. judicial or law enforcement bodies) establishing that the content in question is illegal or constitutes a criminal offense. So far, there have been no such cases.

Other legislation that might be relevant, even though it only indirectly addresses DSA- and DMA-related issues, includes the **Law on Protection of Personal Data, the Law on Consumer Protection, the Law on Competition, and the Law on Obligations**. It should also be noted that BiH is lagging behind harmonization in some other crucial areas, such as alignment of its data protection law with the General Data Protection Regulation (GDPR), lack of a legislative framework on cybersecurity, or a country-wide strategy and action plan for the development of the information society<sup>[126]</sup>. It is also important to stress that, due to a highly complex administrative arrangement of the country, certain areas are under the competence of entities and not the state. For instance, **the Law on Information Security** is in place only in the Republika Srpska entity and not in the Federation of BiH, even though the draft legislation was prepared and sent to the FBiH Parliament in December 2022<sup>[127]</sup>. The Federation of BiH is also awaiting the adoption of the Law on Internal Trade<sup>[128]</sup>, which will provide for the obligation of “traders who manage the electronic platform” (i.e. online marketplace providers) to verify the traders who provide goods and services on their platforms, which is one of the obligations envisaged by the DSA.

Relevant state-level institutions include **the communications regulator (CRA), Personal Data Protection Agency, Competition Council, and the Institution of the Ombudsman for Consumer Protection**. Republika Srpska has recently established the **Agency for Information and Communication Technologies**, whereas a similar institution does not exist in the Federation of BiH. **The Ministry of Communications and Transport (MCT)** is the state-level ministry in charge of common policy, international, and inter-entity coordination. However, there are also ministries with competencies in the field of communications for each of the two entities. It is precisely this overlap of competencies that could potentially pose challenges at the level of both harmonization and implementation (see below).

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[126] “Strategy and Reports.” European Neighbourhood Policy and Enlargement Negotiations (DG NEAR). Accessed June 13, 2024. [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/strategy-and-reports\\_en](https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/strategy-and-reports_en).

[127] “Vlada Federacije Bosne i Hercegovine | Utvrđen Nacrt zakona o informacionoj sigurnosti FBiH,” Vlada Federacije Bosne i Hercegovine, December 29, 2022, <https://fbihvlada.gov.ba/bs/utvrden-nacrt-zakona-o-informacionoj-sigurnosti-fbih>.

[128] Parlament Bosne i Hercegovine, Nacrt Zakona o unutrašnjoj trgovini, 10.03.2023. [https://parlamentfbih.gov.ba/v2/userfiles/file/Materijali%20u%20proceduri\\_2023/NACRT%20ZAKONA\\_unutr\\_trg\\_BOS.pdf](https://parlamentfbih.gov.ba/v2/userfiles/file/Materijali%20u%20proceduri_2023/NACRT%20ZAKONA_unutr_trg_BOS.pdf)

## State actors and harmonization with the DSA

**Bosnia and Herzegovina has not commenced the process of harmonization with the DSA.** This issue has not yet been discussed or consulted on formally at the level of relevant authorities or government, nor have there been any discussions around the possibility of taking a coordinated approach with the governments of other Western Balkans countries. The only regional cooperation in this regard is between the media regulatory authorities, which have identified the need of cooperation in terms of future DSA implementation, from the point of view of common challenges such as insufficient human and technical resources, exchange of knowledge and expertise, etc.<sup>[129]</sup> .

Even though the European Commission, in its 2023 Report<sup>[130]</sup> concludes that “Alignment with the Digital Services Act and the Digital Markets Act needs to be stepped up to provide predictability for the business community,” there has not been any formal communication on its behalf to the relevant authorities either. The need to initiate legislative processes towards this goal has been emphasized only informally so far, mostly by the CRA in various meetings with the representatives of the competent authorities and international community, as well as during different gatherings and conferences on a wider topic of the prevention of illegal and harmful online content.<sup>[131]</sup> In the cases of both the CRA and the MCT, awareness and knowledge of the processes around DSA and DMA adoption and implementation are the result of their regular activities on following legislative developments at the EU level.

The MCT has not initiated any legislative process since they are currently working on other priorities, in addition to being understaffed. Even though no formal plans have been made so far, the Ministry expressed the intention to include **the preparation and adoption of the Law on Digital Services** in the mid-term work programme of the BiH Council of Ministers for 2025-2027<sup>[132]</sup>. As expressed by the interviewed stakeholders, the harmonization process is indeed expected to be initiated and led by the MCT as the state-level government institution with competencies in this sector.

[129] Azra Maslo, Interview with Communications Regulator Representative, 2024.

[130] European Commission, “Commission Staff Working Document: Bosnia and Herzegovina 2023 Report” (Brussels: European Commission, November 2023), [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD\\_2023\\_691%20Bosnia%20and%20Herzegovina%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_691%20Bosnia%20and%20Herzegovina%20report.pdf).

[131] Azra Maslo, Interview with Communications Regulator Representative, 2024.

[132] Irida Varatanović and Milanka Sudžum, Interview with Representatives from the Ministry of Communications and Transport, 2024.

The procedure requires the MCT to form a working group which should include the representatives of other state institutions, such as the CRA and the Directorate of European Integration (DEI), as well as those of entity-level institutions and agencies since they also have competencies in the field of communications and information society<sup>[133]</sup>. The MCT, however, believes that due to the complexity of the legislation in question, it would be useful to apply for TAIEX<sup>[134]</sup>, the assistance instrument of the European Commission. This would require the involvement of relevant EU experts prior to the establishment of the working group. For example, through a TAIEX expert mission, relevant EU Member State experts would provide advice on implementing the DSA and would help identify all relevant stakeholders in this process. The CRA stresses the importance of ensuring the participation of a broad spectrum of stakeholders, which would also include non-state actors and international organizations in an observer capacity.

## Non-state actors and the initiatives to address DSA-related issues

CSOs have been following DSA-related issues for over two years. In addition to various panel discussions, which involved participants not only from the civil sector but also from the international organizations and some state actors, there were some training and capacity building activities directed towards the CSOs, focusing on raising general knowledge and awareness of the EU legislative framework on digital services and their potential implications in BiH and the region. Mediacentar Sarajevo prepared the study on regulation of harmful online content as part of the UNESCO project “Social Media 4 Peace”<sup>[135]</sup>. The study offers an overview of the legislative, regulatory, and self-regulatory frameworks against harmful content online in BiH, but also at the EU level, including the DSA. Within this project, Mediacentar also organized a workshop for civil society and media organizations focusing precisely on DSA (in April 2022), as well as published several articles on this topic on [www.media.ba](http://www.media.ba)<sup>[136]</sup>.

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[133] Ibid.

[134] TAIEX (Technical Assistance and Information Exchange) instrument of the European Commission is aimed at supporting public administrations with regard to the approximation, application and enforcement of EU legislation as well as facilitating the sharing of EU best practices, [https://neighbourhood-enlargement.ec.europa.eu/funding-and-technical-assistance/taieix\\_en](https://neighbourhood-enlargement.ec.europa.eu/funding-and-technical-assistance/taieix_en)

[135] Anida Sokol and Maja Čalović (2022). Regulation of Harmful Content Online in Bosnia and Herzegovina: Between Freedom of Expression and Harms to Democracy. Mediacentar Sarajevo. <https://bosniaherzegovina.un.org/sites/default/files/2022-06/ENG%20Regulacija%20%C5%A1tetnog%20sadr%C5%BEaja%20na%20internetu%20-%20WEB%20Spreads.pdf>

[136] Anida Sokol, Interview with Mediacentar Sarajevo, 2024.



Some other initiatives supported by the international organizations include the study titled “Towards the Co-regulation of Harmful Online Content in Bosnia and Herzegovina”<sup>[137]</sup> produced within the framework of the joint project of the EU and the Council of Europe, “Protecting freedom of expression and of the media in Bosnia and Herzegovina (PRO-FREX)”<sup>[138]</sup>. This study was commissioned by the CRA as one of the beneficiaries of the project to obtain recommendations for improving the current approach to regulation of harmful online content in BiH, with a particular focus on the possibilities and modalities of establishing a functioning and comprehensive implementation mechanism based on co-regulation and cooperation. Even though the study explores broader issues of harmful online content, this study takes note of the coordination system envisaged by the DSA and proposes a mechanism for combating harmful online content in BiH based on the co-regulation and cooperation multistakeholder approach (see below).

The Media Law School, a program organized by the University of Sarajevo with the support of the OSCE Mission to BiH, is also worth mentioning. The program included lectures on DSA and issues related to freedom of expression and social media.

The CSOs have been actively involved with other organizations from the WB region with the view of advocating for a coordinated approach to DSA implementation in the region. CSO Zašto ne facilitated the consultation process with over 30 participants from various organizations and institutions from the region as part of the Civil Society Forum of the Western Balkans (CSF WB). This project produced key recommendations clustered around three pillars: facilitating the entrance of the WB countries into the EU Digital Single Market, applying the DSA in the region, and advocating for the expansion of the Code of Practice against Disinformation commitments to the WB region<sup>[139]</sup>.

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[137] Deirdre Kevin and Asja Rokša-Zubčević (2023). Towards the Co-regulation of Harmful Online Content in Bosnia and Herzegovina. Council of Europe. <https://rm.coe.int/co-regulation-of-harmful-content-online-study-eng/1680adeef7>

[138] Council of Europe Office in Sarajevo - “Protecting Freedom of Expression and of the Media in Bosnia and Herzegovina (PRO-FREX) - Council of Europe Office in Sarajevo - Wwww.Coe.Int.” <https://www.coe.int/en/web/sarajevo/protecting-freedom-of-expression-and-of-the-media-in-bosnia-and-herzegovina-pro-frex-bh->

[139] The Civil Society Forum of the Western Balkans (2023). Key Recommendations of the Thematic Working Group on Digitalization and Connectivity, [https://www.wb-csf.eu/docs/03\\_Key-Recommendations-of-the-Thematic-Working-Group-on-Digitalization-and-Connectivity.pdf.pdf](https://www.wb-csf.eu/docs/03_Key-Recommendations-of-the-Thematic-Working-Group-on-Digitalization-and-Connectivity.pdf.pdf)



Contacts with major online platforms, in terms of their potential implementation of DSA requirements, have so far been limited to very informal exchanges with some Meta representatives, however, not at the policy level<sup>[140]</sup>. In June 2023, a Coalition for Freedom of Expression and Content Moderation in Bosnia and Herzegovina was launched with the support of UNESCO<sup>[141]</sup>, gathering NGOs and experts with the aim of liaising with social networks and bringing to their attention the issues and challenges faced by users in BiH. This included issues regarding content moderation in local contexts, as well as flagging the most flagrant instances of harmful content. The Coalition has already established communication with Meta and TikTok and is planning to expand this list to some other major players. In that sense, it seems that the Coalition could play a significant role in the processes around DSA implementation, especially since the trusted partner status currently awarded by Meta to certain CSOs such as Mediacentar Sarajevo does not bring significant improvements in terms of content moderation.

## Institutional readiness and the independence of competent institutions

As the DSA implementation will inevitably require the extension of relevant institutions' remit to digital services and consequently significant strengthening of their capacities, there are concerns in light of the financial constraints that BiH institutions have been facing and their ability to employ new staff<sup>[142]</sup>.

This is in close connection with the issue of independence required under the DSA for the authorities designated to implement it. In this regard, concerns regarding political and financial independence of the CRA should also be mentioned, as regularly expressed by the European Commission in its annual Progress Reports. The perceived lack of political independence concern predominantly the appointment procedures as not guaranteeing “pluralistic representation of interested stakeholders and full independence from the regulated sector and from political influence”<sup>[143]</sup>, and some concerns have also been raised over “selective or discriminatory approach of regulatory actions”<sup>[144]</sup>. CRA's financial independence and stability, and consequently its lack of resources to fully carry out its regulatory mission,<sup>[145]</sup> are very relevant in this regard, since the regulator (despite its

[140] Darko Brkan, Interview with UG Zašto Ne, 2024.

[141] United Nations Bosnia and Herzegovina, Story, 19.06.2023. <https://bosniaherzegovina.un.org/en/238289-unesco-supports-launch-coalition-freedom-expression-and-content-moderation-bosnia-and>

[142] Varatanović and Sudžum, Interview with Representatives from the Ministry of Communications and Transport.

[143] European Commission, “Commission Staff Working Document: Bosnia and Herzegovina 2023 Report.”

[144] Media Freedom Rapid Response (2024). Bosnia and Herzegovina: Media Freedom in Survival Mode. <https://www.mfrr.eu/wp-content/uploads/2024/01/bosnia-and-herzegovina-media-freedom-in-survival-mode-1.pdf>

[145] Ibid.

independent source of financing through license fees) is bound by the same restrictions as state budget users in terms of employment, material costs, and capital expenditures. This raises concerns as to whether the CRA, or any other state authority to which the same restrictions apply, will be in a position to adequately perform its duties stemming from the extended remit.

## A broader set of concerns related to the implementation of the DSA

Given the complex political context and administrative setup of BiH and previous experience with legislative processes at the state level, the issue of competencies is a major cause for concern. The harmonization process will need to be coordinated between state and entity institutions, given the insistence of Republika Srpska on decentralization. It will be necessary to find a model that everybody agrees with, a process that could persist for many years<sup>[146]</sup>. In practice, entity institutions might refuse to nominate members of the working group, as was the case with the planned Law on cyber security, where they claimed that the MCT, as a state-level institution, did not have the competency to draft this law<sup>[147]</sup>. Or, working group members could express dissenting opinions, which would make it difficult for the law to be endorsed by the Council of Ministers or adopted by Parliament<sup>[148]</sup>.

Parallel legislative processes already existing at different levels of administration could lead to further fragmentation. In April 2021, a working group, established by the Ministry of Justice, was tasked with preparing a draft Law on prevention of illegal hate speech on the Internet that would mirror solutions similar to those found in EU member state laws, such as the German NetzDG. The work on this draft is currently on hold, pending developments around DSA implementation<sup>[149]</sup>. In April 2023, the government of Sarajevo Canton endorsed a draft law defining the internet as a public space and introducing disproportionate sanctions for the online dissemination of undefined ‘fake news’<sup>[150]</sup>. Such initiatives testify to the lack of understanding, expertise, and in-depth knowledge necessary to address such complex issues within the local context on the one hand and political interests on the other hand, which could result in the misuse of legislation to curb freedom of expression<sup>[151]</sup>.

[146] Kovačević, “Email with EU Delegation to BiH,” 2024.

[147] Varatanović and Sudžum, Interview with Representatives from the Ministry of Communications and Transport.

[148] *ibid.*

[149] Vijeće Ministara Bosne i Hercegovine; Održana 55. sjednica Vijeća ministara, August 25, 2022. [https://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja\\_sa\\_sjednica/default.aspx?id=38421&langTag=bs-BA](https://www.vijeceministara.gov.ba/saopstenja/sjednice/saopstenja_sa_sjednica/default.aspx?id=38421&langTag=bs-BA).

[150] European Commission, “Commission Staff Working Document: Bosnia and Herzegovina 2023 Report.”

[151] Sokol, Interview with Mediacentar Sarajevo.

Another concern is related to the complexity of DSA enforcement and monitoring and the already mentioned difficulties of acquiring sufficient financial and human resources. There is also a more general concern over the quality of enforcement by the state authorities and the way they will react to the issues that the DSA is trying to address<sup>[152]</sup>. Finally, there is uncertainty regarding the status of BiH as an EU candidate country vis-à-vis DSA implementation.

## Recommendations to address the concerns

First of all, there is a need for advocacy efforts and education of decision-makers in order to have their clear commitment and political will to start the DSA harmonization process. It is crucial that the process itself is open and transparent, that multiple actors are involved, and that extensive expert support is ensured so the process is not left entirely to the ministries that do not necessarily have a comprehensive and in-depth understanding of the principles of freedom of expression and the functioning of social networks<sup>[153]</sup>. The role of civil society in continuous advocacy and monitoring of DSA implementation is key; however, it is also crucial to empower these organizations for this task because they are often overburdened with different projects and lack time and resources, which would ensure their consistent role in this process<sup>[154]</sup>.

Cooperation at the regional level has been recognized as very important,<sup>[155]</sup> as has the support of the European Union in this process through: facilitating the coordination between authorities of the WB countries, extending its advocacy efforts towards tech companies to include WB countries, and offering support to non-governmental sector and academia in monitoring the DSA implementation<sup>[156]</sup>.

## Digital Service Coordinator: challenges and opportunities

**There is a consensus among the interviewed stakeholders that the most likely candidate for a future Digital Service Coordinator (DSC) is the CRA, having in mind the institutional setup in BiH,** the practice of EU Member States, as well as the CRA's current competencies and experience as the converged regulatory authority.

[152] Brkan, Interview with UG Zašto Ne.

[153] Sokol, Interview with Mediacentar Sarajevo.

[154] Ibid.

[155] As suggested by Deirdre Kevin and Asja Rokša-Zubčević (2023): *"Bosnia and Herzegovina, as well as all the countries from the region, are small markets in which the presence of large online platforms in terms of legal representation cannot be expected. ... In that respect, it is recommended to develop a coordinated regulatory approach which could lend the region a much stronger voice in engaging with global online platforms."*

[156] Muftić, "Email with University of Sarajevo Professor," 2024.

The Competition Council is mentioned as another possibility, but there was also an idea of establishing an entirely new state body in the future which would be in charge of digital services and digital technologies in general, including artificial intelligence<sup>[157]</sup>. Nevertheless, the DSA implementation could be based on coordination between several institutions: CRA, Personal Data Protection Agency, Competition Council, Ombudsman for Consumer Protection and Central Election Commission,<sup>[158]</sup> as well as relevant entity-level authorities.

**Involvement of non-state actors in the implementation process, following a multistakeholder approach, is widely supported by state and non-state actors alike.**

The CoE Study explores broader issues of harmful online content. It suggests that BiH should take note of the oversight mechanism envisaged in the DSA and that, rather than one institution, oversight should be entrusted to a platform based on cooperation between different stakeholders that have a role in the digital environment<sup>[159]</sup>. The Study suggests the CRA as the future DSC and the coordinator of the multi-stakeholder platform. It should, in addition to state authorities, also involve relevant CSOs, media and fact-checking organizations, academia, etc. CSOs have been advocating for such a multistakeholder approach in which they could perform a watchdog function over the implementation of the new legislation but also contribute relevant research and analyses, monitoring and flagging harmful content, and performing the role of trusted flaggers.

In any case, the interviewed stakeholders, including the legislator (MCT), agree that any such arrangement should be provided for in the legal instrument(s) implementing the DSA. Formalization of cooperation within the multistakeholder platforms is also recommended by the CoE Study to ensure that the respective tasks of each stakeholder are clearly defined and that they cooperate closely and effectively. The Council of Europe Office in Sarajevo is launching a series of activities in 2024 in order to facilitate the establishment of such a cooperation platform on which the future DSA enforcement mechanism could be built.

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[157] Muftić, "Email with University of Sarajevo Professor," 2024.

[158] Maslo, Interview with Communications Regulator Representative.

[159] Deirdre Kevin, "Legal Opinion on the Draft Law on the Independent Media Commission of Kosovo" (Council of Europe, European Union, May 2024), <https://rm.coe.int/legal-opinion-on-the-draft-law-on-the-independent-media-commission-of-1680afd33b>.

# Country overview: Kosovo

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## Legal and Institutional Framework

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In Kosovo, certain existing laws and regulations have laid the groundwork for compliance and ongoing alignment with European standards in the digital sphere. Even though it is not yet adopted, it shares some common grounds with elements from the Digital Services Act (DSA).

The legal framework for electronic services was laid in 2012 with the enactment of the **Law on Information Society Services No.04/L-094**<sup>[160]</sup> and the **Law on Electronic Communications No. 04/L-109**<sup>[161]</sup>.

The former grants legal equivalence to electronic documentation, facilitating various electronic services, including e-commerce, e-banking, e-payment, e-government, and e-procurement, while also recognizing the validity of electronic signatures. The Law on Electronic Communications in Kosovo regulates electronic communications activities with a commitment to technological neutrality and adherence to the EU regulatory framework for electronic communications, providing a comprehensive framework that aligns with the DSA purpose.

Electronic Communications legislation covers a wide range of areas, including the regulation of related services and facilities, the use of electronic communications resources, and the handling of social interactions involving radio equipment, terminal equipment, and electromagnetic compatibility.<sup>[162]</sup> By addressing these various aspects, the law seeks to create a fair and secure environment for electronic communications, promote responsible and lawful technology use, and give priority to protecting individuals' privacy and personal data<sup>[163]</sup>.

The **Law on Information Society Services No. 04/L-094**<sup>[164]</sup> regulates digital service provision in Kosovo, outlining requirements for E-Commerce, E-Government, E-Procurement, and E-Payment activities, and when an electronic signature is used.

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[160] Kosovo, Law No. 04/L-094 On Information Society Services, 2012

[161] Kosovo, Law No. 04/L-109 On Electronic Communications, 2012

[162] Article 2 of the Law on Electronic Communications

[163] Liridon Dalipi and Agim Zuzaku, "Navigating Legal Frontiers: Addressing Challenges in Regulating the Digital Economy," *Access to Justice in Eastern Europe*, 2024, <https://ajee-journal.com/navigating-legal-frontiers-addressing-challenges-in-regulating-the-digital-economy>.

[164] Kosovo, Law No. 04/L-094 On Information Society Services, 2012

The **Regulatory Authority for Electronic Communications and Postal Services (ARKEP)**<sup>[165]</sup> oversees implementation and enforcement. It ensures compliance, investigates complaints, and imposes sanctions on non-compliant service providers. The law defines information society services broadly, covering online retail, content, communications, bookings, and payment services.

**Law No. 08/L-022 on Electronic Identification and Trust Services in Electronic Transactions No. 08/L-022**<sup>[166]</sup> facilitates secure electronic transactions in Kosovo. It is aligned with eIDAS regulations to establish a common legal framework for cross-border recognition of electronic services. Kosovo's adoption of eIDAS legislation aims to integrate EU standards into its legal framework, enhancing cross-country interoperability and readiness for electronic transactions. The implementation of this part is expected to be monitored in the upcoming years<sup>[167]</sup>.

**The Agency of Information Society (AIS)** in Kosovo drives the nation's digital transformation by formulating national strategies and policies, promoting ICT initiatives, and enhancing ICT infrastructure accessibility. Led by **Law No. 04/L-145 on Information Society Government Bodies**,<sup>[168]</sup> AIS fosters digital inclusion, efficiency, and innovation through collaboration with stakeholders and the facilitation of e-government services. Kosovo's strategic approach and legal foundation position it to navigate the evolving digital landscape effectively and foster a secure and innovative digital environment.

**The Law on Critical Infrastructure No. 06/L-014** is a significant legislative framework that outlines measures to identify, assess, prioritize, and protect critical infrastructure assets, including telecommunications networks, information technology (IT) systems, financial systems, and energy infrastructure<sup>[169]</sup>. Cybersecurity Systems Protection is covered by the **Law on Prevention and Fight of Cyber Crime No. 03/L –166**<sup>[170]</sup>.

The implementation and oversight of these Laws are overseen by **the Ministry of Justice** (MJ), assisted by **the Ministry of Internal Affairs** (MIA) which maintains the database of cybercrime.

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[165] "Autoriteti Rregullativ i Komunikimeve Elektronike Dhe Postare," accessed April 2024, <https://www.arkep-rks.org/>.

[166] Kosovo, Law No. 08/L-022 On Electronic Identification And Trust Services In Electronic Transactions, 2021

[167] Increasing Civic Engagement in the Digital Agenda, "Kosovo Digital Agenda Observatory" (Metamorphosis Foundation, Open Data Kosovo, e-Government Academy, Center for Research, Transparency and Accountability, NGO 35 MM, Levizja MJFT, 2021), <https://opendatakosovo.org/wp-content/uploads/2021/12/Kosovo-DAO-2021.pdf>.

[168] Kosovo, Law No 04/L-145 On Information Society Government Bodies, 2013

[169] Kosovo, Law No. 06/L-014 For Critical Infrastructure, 2018

[170] Kosovo, Law No.03/L –166 On Prevention And Fight Of The Cyber Crime, 2010

In 2023, the Kosovo Assembly passed **Law No. 08/L-173 on Cyber Security**,<sup>[171]</sup> which mandates the establishment of the Cyber Security Agency and partially aligns with Directive (EU) 2013/40, focusing on attacks against information systems.

In addition, Kosovo has responded to cyber security challenges by adopting policies and laws to strengthen information protection and its cyber infrastructure. Adopting the **National Cyber Security Strategy 2023-2027**,<sup>[172]</sup> The Action Plan, and creating the Agency for Cyber Security (KOS-CERT) shows a commitment to capacity building and network security. Nevertheless, it is imperative to persist in integrating Kosovo into international cybersecurity initiatives and enhancing cooperation with regional and global partners to effectively tackle cybersecurity threats.

**The Law on the Independent Media Commission (IMC) No. 04/L-044**<sup>[173]</sup> provides a legal framework for the effective functioning of the Independent Media Commission in Kosovo. This legislation outlines the establishment, organization, and functions of the IMC, which is tasked with regulating audio and audiovisual media services in the country. The law delineates the IMC's powers, including licensing, monitoring, and enforcing regulations to ensure compliance with standards for media content and operations.

**The Law on Access to Public Documents No. 06/L-081**<sup>[174]</sup> establishes a legal framework for citizens' rights to access public information held by government institutions. This legislation serves to promote transparency, accountability, and the free flow of information by guaranteeing the right of every person, without discrimination on any grounds, to access public documents produced, received, maintained, or controlled by public institutions, as well as the right to re-use the public sector documents.

## State Actors and Harmonization with the DSA

According to the legal framework outlined in the previous section, the state actors in Kosovo **most likely to be responsible for DSA alignment** include **the Regulatory Authority for Electronic Communications and Postal Services (ARKEP)** and **the Agency of Information Society (AIS)**. These actors facilitate compliance and promote a safe, transparent, and innovative digital environment in the country by ensuring data privacy, consumer rights protection, and fair market competition.

[171] Law No. 08/L-173 On Cyber Security, 2023

[172] Government of Kosovo, "National Cyber Security Strategy 2023-2027," September 2023, <https://mpb.rks-gov.net/Uploads/Documents/Pdf/EN/2692/Strategjia%20për%20Siguri%20Kibernetike%20-%20ENG..pdf>.

[173] Law No. 04/L-044 On The Independent Media Commission, 2012

[174] Law No. 06/L –081 On access to public documents, 2019

Several governmental bodies are also crucial for pushing forward harmonization efforts with the DSA, including:

- › **The Ministry of Economy** develops policies and regulations to support the growth of the digital economy while ensuring fair competition and consumer protection and promoting innovation in digital services and technologies.
- › **The Office of the Prime Minister and the Ministry of Entrepreneurship, Trade, and Industry** can play a central role in coordinating inter-ministerial efforts related to the DSA
- › **The Ministry of Internal Affairs** collaborates with regulatory authorities to investigate and address violations, particularly regarding illegal content and online crime.

The Government has the leading role in selecting the body or institution for the Digital Services Coordinator, but no official indications have been made yet, or whether there will be a single or multiple institutions to gain this role.

**Considering our up-to-date analysis, there is no information related to the involvement of Kosovo's ministries or other institutional bodies in the process of harmonization with the DSA.** Nor has there been any official communication with the EU made known to the public, considering the research of any resource available.

However, the Ministry of Economy and the Office of the Prime Minister are notified about the formulation and initiation of the DSA process by the EU. They were informed through formal resources from DG Connect and EU newsletters. No concrete activity or training for capacity building has been recorded. The officials from the Ministry of Economy state that no serious analysis exists for the implementation of DSA in the Kosovar context<sup>[175]</sup>.

Despite the situation, given the current efforts, competencies, and jurisdictions of the Kosovar institutions, and the input from the Ministry of Economy, we can make anticipations about the institutions that can be involved in the process related to DSA, considering their role in crafting the up-mentioned strategies based on their institutional position and competences, including:

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[175] Representative from Kosovo Ministry of Economy, DSA Interview, 2024.



- › **The Ministry of Economy** has a crucial role in developing policies and regulations to support the growth of the digital economy while ensuring fair competition and consumer protection and promoting innovation in digital services and technologies. Making assumptions based on mandate and previous engagements, the Ministry of Economy is the leading body for the implementation of the Digital Agenda in Kosovo and may be the lead for DSA as well.
- › **ARKEP (Regulatory Authority of Electronic and Postal Communication)** may take the role of Digital Coordinator Service. ARKEP coordination capabilities, access to stakeholders, and accountability mechanisms would make it a suitable entity to facilitate DSA implementation and compliance efforts.
- › **The Independent Media Commission (IMC)** in Kosovo could play a significant role in the implementation and enforcement of the DSA. IMC can leverage its expertise in regulating audio and audiovisual media services, and contribute to the oversight of online content platforms and the protection of users' rights in the digital sphere.

## Non-state Actors and Initiatives

In Kosovo, non-state actors have been actively involved in integrating and promoting digital transformation and its related sub-fields. Various civil society organizations, media outlets, associations, fact-checkers, and researchers, have been contributing to the Digital Agenda of Kosovo, respectively for Digital Agenda Kosovo 2013-2020 and Digital Agenda Kosovo 2023-2030.

Although there are neither initiatives nor engagements regarding the Digital Services Act (DSA) nor the Digital Markets Act (DMA), their current efforts focus on digital rights, privacy, data protection, transparency, and broader human rights concerns. Many CSOs are directly involved in the working groups that contribute to the preparation of action plans within different ministries in terms of their strategic goals.

Open Data Kosovo (ODK) is directly involved in the e-Participation process. Through the project, "Boost Good Governance", supported by the National Endowment for Democracy, it is developing an e-Participation platform for the Kosovo Assembly, which aims to be the space through which citizens can engage in and participate in the activities led by the Assembly of Kosovo.

The Open Government Data Portal is another important portal developed by ODK. It enables citizens and other stakeholders to access public datasets uploaded by different

institutions<sup>[176]</sup>. The portal is managed by the Agency of Information Society (AIS). The number of datasets uploaded in this portal remains limited considering the lack of updates, however, it serves as an important point to foster e-democracy and promote open data practices among the institutions<sup>[177]</sup>.

However, no notable DSA-related initiatives or discussions have been registered from the non-state actors, as of April 2024.

## Institutional Readiness and Independence

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A significant challenge identified in this analysis is the lack of effort from the Government of Kosovo to cooperate with the Ministry of Industry, Entrepreneurship, and Trade to initiate the process and coordinate with the Ministry of Economy, as a potential leading institution that would adopt DSA with a strong knowledge base, and ARKEP as a potential foreseen Digital Coordinator Service.

As the process should be conducted jointly with the Government of Kosovo and MINT, it prevents the Ministry of Economy and ARKEP from initiating the first move towards concrete steps for DSA.

Even though well-planned coordination with multiple stakeholders is sustainable in principle, to discuss the legislative, financial, and human resources at disposal, the Government of Kosovo should initiate discussions with the EU. This way, the local process can start and take into account the development of the initial concept for the DSA and continue with the establishment of the activity in the Annual Legislative Program.

The cooperation between the Government of Kosovo and the EU can begin with the Initiation of Discussion for DSA, a financial, legislative, and human capital resources assessment, legislative alignments, stakeholders engagement, including the public and private sector and civil society organizations, and local implementation as an anticipated final stage.

Activities related to the Digital Services Act (DSA) could be included in Kosovo's Annual Legislative Program. This would indicate the government's commitment to advancing the initiative and allocating resources for its implementation.

Institutional fragmentation and political partitions in Kosovo's government endanger the independence of institutions to effectively collaborate and coordinate DSA efforts.

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[176] Government of Kosovo, "Open Data Republic of Kosovo," accessed April 2024, <https://opendata.rks-gov.net/>.

[177] Increasing Civic Engagement in the Digital Agenda, "Kosovo Digital Agenda Observatory."

While initiatives like the Administrative Burden Reduction Program and the e-Governance Strategy aim to enhance service efficiency and transparency, technical issues with the e-Kosova platform<sup>[178]</sup> and limited public awareness poses challenges. Moreover, the legal framework for public administration, though established, lacks effective implementation, as evidenced by slow progress in rationalizing agencies and resistance to decisions by independent institutions. While the National Development Strategy outlines key objectives, the public remains unaware of its implementation status due to the absence of a report. In addition, the Government continues to be characterized by inadequate outreach efforts, hindering inclusive policy development and coordination<sup>[179]</sup>.

## Concerns related to the implementation of DSA-related regulation in Kosovo

First, Kosovo's journey towards digital regulatory alignment with the European Union DSA presents a significant challenge due to the lack of concrete action and discussions. While no official adoption of the DSA has been made, particularly in the development of legislative frameworks, challenges such as initial DSA discussions and the lack of concrete action.

In March 2023, the Government approved the **National Development Strategy 2022-2030 (NDS)**,<sup>[180]</sup> a master plan outlining the country's economic, social, and political trajectory for the upcoming years. However, there is no publicly available report, hindering visibility into the progress, challenges, and achievement of these objectives. Based on the overall description of the strategy, the chance was missed for the DSA topics and alignment to find their place within the NDS. Proper implementation of the NDS remains crucial given its overarching function as the main development strategy, aligning other key strategic documents.

As for early consultations, for most of the sectors, civil society and others remain scarcely involved. As in previous years, there is still a lack of policy papers, pre-impact assessments, and post-policy analyses by government institutions. These tools are essential for ensuring informed decision-making and evaluating the efficacy of policies and regulations in place<sup>[181]</sup>. Kosovo has achieved some important milestones in terms of digital reforms, but needs to further develop the digital governance institutional architecture and strengthen the government network infrastructure and shared platforms. These are key foundations to support the digital transformation of government and public services.

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[178] Government of Kosovo, "eKosova: Platforma e Shërbimeve Online," accessed April 2024, <https://ekosova.rks-gov.net/>.

[179] Group for Legal and Political Studies, "Reflecting on the Third Year of Kurti II: Setbacks and Achievements in Rule of Law, Public Administration, and Foreign Policy" (Pristina: Group for Legal and Political Studies, April 2024), <https://www.legalpoliticalstudies.org/wp-content/uploads/2024/04/GLPS-PolicyAnalysis-Three-Years-of-Kurti-II-1.pdf>.

[180] Office of the Prime Minister of Kosovo, "National Development Strategy – 2030" (Government of Kosovo, 2022).

[181] Group for Legal and Political Studies, "Reflecting on the Third Year of Kurti II: Setbacks and Achievements in Rule of Law, Public Administration, and Foreign Policy."

Second, ARKEP is intended to operate independently of government and industry influence. The Assembly of the Republic of Kosovo appoints the board of this body. Its work involves engaging with non-state actors, including telecommunications companies, service providers, and industry associations. ARKEP's funding comes from various sources, including regulatory fees collected from telecommunications and postal service providers and government allocations. It focuses on the provision of landline telephone services and mobile and internet access, and its personnel have expertise in telecommunications regulation, law, and economics.

In 2022, the cable operators in the country made major changes in the content of the programs offered, causing complaints and dissatisfaction among their customers. ARKEP announced that it is not competent for the content transmitted through television channels or the changes made on the operators' platform. According to ARKEP, the Independent Media Commission (IMC) regulates the rights, obligations, and responsibilities of individuals and legal persons who provide audio and audiovisual media services and are responsible for licensing and monitoring the broadcast content<sup>[182]</sup>. **Given the consent of the IMC, there are overlaps in the legislation in force that raise concerns about ARKEP's ability to act effectively independently in its regulatory capacity.**

Third, the small market and the lack of a regulatory framework for the implementation of DSA are two permanent concerns regarding the institutions in Kosovo, and include the following challenges:

- › **Limited human and financial resources** are at the disposal of ARKEP and AIS as regulatory agencies tasked with implementing and enforcing the DSA.
- › **Limited expertise and training** regarding specialized expertise by trained professionals in areas such as relevant legal frameworks, digital policy, and technology regulation.
- › **Lack of technical infrastructure and tools** needed to monitor and enforce compliance with the DSA are present, such as advanced analytics capabilities, cybersecurity measures, and digital enforcement mechanisms.

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[182] <https://www.kpm-ks.org/en/kpm/311/per-kpm/311>

## Recommendations to address the concerns of multi-stakeholders

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### The Government of Kosovo

- › The Government of Kosovo should prioritize learning and prepare for the implementation of DSA and DMA by understanding their requirements, implications, and compliance measures, as well as conducting assessments, providing training, and engaging with EU officials to ensure readiness and alignment with DSA regulations.
- › The Government of Kosovo should make continuous efforts to improve the Law on the Protection of Personal Data and present powerful legislation for sanctions for incidents involving cyberbullying and non-consensual intimate images. These should follow best practices from EU states to best protect the rights of their citizens to privacy - and especially those of women, who are the main victims of these criminal acts.
- › The government of Kosovo should prioritize early and meaningful consultations with civil society and other stakeholders across various sectors. This includes actively involving them in the working groups, conducting assessments, and performing post-policy analyses related to DSA.

### Academia and Civil Society

- › The integration of digital literacy training should be embedded at all education levels to ensure that the education system adapts and responds to technological developments. This should encompass not only technical skills but also critical thinking and ethical considerations in digital spaces. Relying on the guidelines or incentives from DSA can be a solid base for educational institutions to integrate these topics into their curriculum.
- › Awareness of cyber security, IT, and digital transformation must grow through extracurricular programs provided by academia to different civil society groups and students.
- › Efforts should be directed towards enhancing civil society's capacity and awareness regarding cybersecurity, increasing knowledge of governing digital platforms and their regulation, and providing more information and involvement opportunities in initiatives such as the DSA.

### Private Sector

- › Private-public potential partnerships should be explored to increase governmental and non- governmental capacities in the field of emerging technologies, while thoroughly discussing the requirements to advocate for the adoption of the Digital Service Act (DSA).

## Thinking Forward: Future Operational Models of Multi-Stakeholder Digital Service Coordinator Body

In June 2023, the Government of the Republic of Kosovo approved the Kosovo Digital Agenda 2030, a comprehensive strategy developed by the Ministry of Economy. This cross-sectoral initiative outlines specific policies and priorities for Kosovo's digital transformation, aligning with the latest strategies and recommendations from the EU. Influenced by innovative technologies and global digital trends, the agenda aims to drive economic and societal growth while ensuring alignment with EU digital initiatives such as the 2030 Digital Compass, Green Deal, and Cybersecurity of 5G Networks, etc<sup>[183]</sup>.

Even though Kosovo is embracing the best practices from the EU for the process of DSA harmonization, the Government of Kosovo should initiate concrete talks with EU officials since there are no official discussions for action or any concrete steps.

The Government of Kosovo, specifically the Ministry of Economy, has been informed about the topic of DSA through official channels provided by the Regional Cooperation Council (RCC); however, no information to pinpoint the exact time and location has been recorded and provided to us<sup>[184]</sup>. The first step would be the discussion on defining the leading institution that would serve as the Digital Services Coordinator, pinpointing the core competencies and responsibilities.

The Government of Kosovo should rely on more enhanced cooperation with the private sector, civil society, academia, and citizens to discuss the importance of DSA, harmonization actions, and the plan to establish the Digital Service Coordinator. **This collaboration would ensure a holistic approach based on multiple perspectives from different stakeholders that would accommodate their experiences and expertise in the governance of digital services.** The non-state actors would be a ladder for the public institutions toward capacity-building on digitalization processes to conform to DSA regulations.

[183] "Government Approves Kosovo Digital Agenda 2030." ME, June 13, 2024. <https://me.rks-gov.net/en/blog/government-approves-kosovo-digital-agenda-2030>

[184] Representative from Kosovo Ministry of Economy, DSA Interview, 2024.

# Country Overview: North Macedonia

## Legislative and institutional framework relevant to the implementation of the DSA

North Macedonia was identified as a potential candidate for EU membership during the Thessaloniki European Council summit in 2003. In March 2020, the members of the European Council endorsed the General Affairs Council's decision<sup>[185]</sup> to open accession negotiations with North Macedonia. In July 2022, the Commission started the screening process. North Macedonia is a NATO member and contributes to the alliance's collective defense and security efforts.

The most relevant national document that provides a general image of the alignment of national legislation with EU regulations and policies is the **National Program on the Adoption of the EU Acquis (NPAA)**<sup>[186]</sup>. Despite the fact that the NPAA should be updated and published every year, given its key role in planning and transposition of EU regulations, the last publicly available version of this program dates from 2017. Therefore, an analysis cannot be made and conclusions cannot be inferred if all measures adopted by the EU in the last several years have been integrated. Therefore, sources such as the EC progress reports for North Macedonia and other strategic documents have been used to review the relevant legal framework and progress towards approximation to EU acquis relevant to the implementation of the DSA and DMA.

The current **Law on Audio and Audio-visual Media Services**<sup>[187]</sup> regulates only the operation of audio and audio-visual media service providers, both linear and nonlinear. According to this Law's amendments, adopted on July 17, 2023, video-sharing platforms, when established in North Macedonia, will also be subject to legal regulation. According to the latest amendments to this Law, adopted on March 6, 2024, the financing of state campaigns at the state and local level are also subject to legal regulation.

[185] Council of the European Union: General Secretariat of the Council, "Enlargement and Stabilization and Association Process, the Republic of North Macedonia and the Republic of Albania: Council Conclusions" (Brussels: European Union, March 25, 2020), <https://data.consilium.europa.eu/doc/document/ST-7002-2020-INIT/en/pdf>.

[186] Government of the Republic of North Macedonia, Secretariat of European Affairs, "National Programme for Adoption of the Acquis Communautaire," Government of the Republic of North Macedonia, 2024, <https://sep.gov.mk/en/post?id=13>.

[187] Law on Audio and Audio-visual Media Services ("Official Gazette of the Republic of Macedonia" No. 184/2013, 13/2014, 44/2014, 101/2014, 132/2014, 142/2016, 132/2017, 168/2018, 248 /2018 and 27/2019 and "Official Gazette of the Republic of North Macedonia" No. 42/2020, 77/2021, 154/2023 and 55/2024).

The **Agency for Audio and Audio-visual Media Services**, an independent and non-profit regulatory body, is the competent authority for matters covered by the Law on Audio and Audio-visual Media Services. The current **Law on Media**<sup>[188]</sup> regulates some basic aspects of the operation of print media including their legal status and registration, transparency of ownership structure, the establishment of a newsroom and appointment of editors-in-chief, protection of journalists' sources, minors' protection, the right to reply and correction, and the ban for publishing content with hate speech and incitement to violence.

**Online media is currently not subject to media legislation.** A self-regulatory body, the **Council of Media Ethics**, established a voluntary registry of professional online news media, "Promedia"<sup>[189]</sup>. The Press Complaints Commission, a body of the Council of Media Ethics, decides on complaints submitted by various entities, legal and natural, related to violations of the ethical and professional reporting standards in the online media and printed press. Stronger self-regulation is needed for online media, in particular through promotion of the registry of online media (promedia.mk) and the development of professional standards for online journalism.

There are no mechanisms in place to efficiently deal with **hate speech, fake news, and disinformation** on online platforms<sup>[190]</sup>. **The Criminal Code**<sup>[191]</sup> contains several provisions that regulate hate speech on and offline. Hate speech is also included in the **Law on Audio and Audio-visual Media Services**, whereby audio and audiovisual media services should not contain programmes that incite hate<sup>[192]</sup>. However, the **Agency for Audio and Audio-visual**

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[188] Law on Media ("Official Gazette of the Republic of Macedonia" No. 184/2013 and 13/2014 and "Official Gazette of the Republic of North Macedonia" No. 63/2024).

[189] "Register of Members," Promedia: Professional Online Media, accessed April, 2024, <https://promedia.mk/index.php?lang=en>.

[190] In the section on the rule of law and fundamental rights, the European Commission's 2023 Country Progress Report noted that online media are not governed by any specific law, while there is a shift in the advertising market towards digital, with growing threats from disinformation, breaches of intellectual rights, and a lack of transparency concerning paid political advertising. Certain online media outlets are subject to influence from political figures.

[191] Criminal Code ("Official Gazette of the Republic of Macedonia" nos. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014, 132/2014, 160/2014, 199/2014, 196/2015, 226/2015, 97/2017 and 248/2018 and "Official Gazette of the Republic of North Macedonia" nos. 36/2023 and 188/2023).

[192] Article 48 of the Law on Audio and Audiovisual Media Services, which stipulates special prohibitions ("Official Gazette of Republic of North Macedonia" 184/13, 13/14, 44/14, 101/14, 132/14, 142/16, 132/17, 168/18, 248/18, 27/19, 42/20, 77/21, 154/23, and 55/24), available on AVMS's website: <https://avmu.mk/%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD-%D0%B7%D0%B0-%D0%B0%D1%83%D0%B4%D0%B8%D0%BE-%D0%B8-%D0%B0%D1%83%D0%B4%D0%B8%D0%BE%D0%B2%D0%B8%D0%B7%D1%83%D0%B5-%D0%BB%D0%BD%D0%B8-%D0%BC%D0%B5%D0%B4%D0%B8%D1%83%D0%BC/>.



**Media Services** cannot perform supervision on social media and video-sharing platforms established outside the country. Therefore, this provision does not have significant importance in the sphere where hate speech is most prevalent. In this regard, as previously stated, North Macedonia has a self-regulation mechanism set through the **Council of Media Ethics**, which can take actions against content posted on online media. Despite the Council's activity in regards to processing complaints, its decisions are often not respected by the online media that act in violation of the Code of Conduct for Journalists, whereby harmful content often remains and is easily shared in the internet space<sup>[193]</sup>. With the latest amendments to the **Law on Audio and Audio-visual Media Services**, effective since July 2023, the **Agency for Audio and Audio-visual Media Services** has jurisdiction over video-sharing platforms provided through an electronic communication network and established in North Macedonia. These platforms primarily aim to provide the public with access to programs and/or videos created by users, serving an informative, educational, or entertainment function. The service provider holds no editorial responsibility for the content but solely determines the organization of the service.

Except for regulated domestic TV stations and Facebook which has a fact-checking program, all other media channels that citizens use to inform themselves daily do not contain provisions explicitly addressing disinformation. Although online media are supposed to adhere to the **Code of Ethics of Journalists** and certain conditions to become part of the self-regulatory framework, they generally fail to do so. At the initiative<sup>[194]</sup> of a group of civil organizations,<sup>[195]</sup> the Government of North Macedonia undertook the obligation **to create a National Strategy for Building Societal Resilience against the Harmful Influences of Disinformation**, as part of their Annual Work Program for 2024<sup>[196]</sup>. Hence, the national **Strategy and action plan on building resilience and confronting hybrid threats (2021-2025)** includes measures to address disinformation and hybrid threats. However, efforts to combat disinformation are limited<sup>[197]</sup>.

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[193] Government of the Republic of North Macedonia, "Одлуки и мислења," SEMM, accessed April, 2024, <https://semm.mk/odluki/>.

[194] Metamorphosis engaged relevant institutions and the civil society in advocacy effort towards creation of policies to counter the impact of disinformation, including wide consultations with local stakeholders on creation of national strategic framework to counter disinformation, while addressing concerns by media organizations that all anti-disinformation policy efforts must include safeguard mechanisms for strict protection for human rights.

[195] Metamorphosis Foundation, "Препораки За Заедничка Акција За Градење Општествена Отпорност Кон Штетните Влијанија На Дезинформациите - Metamorphosis," Metamorphosis - Foundation for Internet and Society, June 27, 2023, [https://metamorphosis.org.mk/izdanija\\_arhiva/preporaki-za-zaednichka-akcija-za-gradenje-opshtestvena-otpornost-kon-shtetnite-vlijanija-na-dezinformaciite/](https://metamorphosis.org.mk/izdanija_arhiva/preporaki-za-zaednichka-akcija-za-gradenje-opshtestvena-otpornost-kon-shtetnite-vlijanija-na-dezinformaciite/).

[196] Ministry of Defense of the Republic of North Macedonia, "Letter from the Ministry of Defense of the Republic of North Macedonia No. 10-2584/2 to the General Secretariat of the Government of the Republic of North Macedonia," October 19, 2023.

[197] European Commission, "Commission Staff Working Document: North Macedonia 2023 Report" (Brussels: European Union, November 8, 2023), [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD\\_2023\\_693%20North%20Macedonia%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_693%20North%20Macedonia%20report.pdf).

The **Law on Electronic Communications**<sup>[198]</sup> regulates the conditions and methods for providing public electronic communication networks and public electronic communication services in North Macedonia. The Law stipulates the obligation for all telephone and internet providers to retain the so-called metadata of all their users for one year, despite the well-known invalidation of the EU Data Retention Directive back in 2014<sup>[199]</sup>. Metadata includes data about when and with whom we communicate, the form of communication used, the devices involved, locations, and movements with mobile phone devices. Also, the stated purpose of the law is to protect the rights of users, including end users. The **Ministry of Information Society and Administration**, along with the **Agency for Electronic Communications**, are responsible for matters related to electronic communications in North Macedonia. The agency is an independent, non-profit regulatory body overseeing electronic communications markets in the country.

The new draft **Law for Network and Information Systems Security and Digital Transformation** is in parliamentary procedure in North Macedonia, aligned with Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 i.e., NIS 2 Directive. The proposed Law establishes the **Agency for Security of Network and Information Systems and Digital Transformation** which will be responsible for security of network and information systems and the digital transformation of the public sector in North Macedonia.

The competent Ministry for Information Society and Administration presents<sup>[200]</sup> this **Agency** as the future Digital Services Coordinator (DSC) in North Macedonia. The bodies of the Agency are: the Commission, the Executive Director, and the Expert Council. The Commission will consist of five members appointed and dismissed by the Government, which calls into question their independence; that is, there is a possibility of political influence. Three members should be from the field of information and communication technologies, one from the field of law and one from the field of economics. Also, the Minister of Information Society and Administration presents the Agency as a regulatory body for the security of network and information systems, endowed with public powers established by the new draft law<sup>[201]</sup>.

[198] Law on Electronic Communications (“Official Gazette of the Republic of Macedonia” No. 39/2014, 188/2014, 44/2015, 193/2015, 11/2018 and 21/2018 and “Official Gazette of the Republic of North Macedonia” No. 98/2019, 153/2019 and 92/2021).

[199] The NATO Cooperative Cyber Defence Centre of Excellence, “EU Data Retention Directive Invalid,” The NATO Cooperative Cyber Defence Centre of Excellence, accessed April, 2024, <https://ccdcoe.org/incyber-articles/eu-data-retention-directive-invalid/>.

[200] MISA Representative, “Answers to a Questionnaire,” March 13, 2024.

[201] Government of the Republic of North Macedonia, “Одржана Јавна Расправа За Законот За Безбедност На Мрежни и Информациски Системи и Дигитална Трансформација,” October 10, 2023, <https://vlada.mk/node/34773>.

The **Law on Protection of Personal Data** is harmonized with Regulation 2016/679 on protection of personal data. The relevance of the Personal Data Protection Law in North Macedonia to the Digital Services Act (DSA) lies in its potential to contribute to the protection of citizens' rights, particularly regarding the abuse of their data online. Article 3 should be noted because it a precise definition of territorial jurisdiction<sup>[202]</sup>. This is among emerging systemic legal issues. Keeping in mind that large platforms are based outside North Macedonia it is important to clearly define territorial application of relevant laws on entities, including providers, service providers, traders, and platforms whose services are used within the territory of North Macedonia. Even when the Agency for Personal Data Protection does not have territorial jurisdiction to take action, its proactive approach to contacting service providers in other states or to cooperating with foreign authorities could contribute to the protection of citizens' rights, including against the abuse of their personal data on the internet<sup>[203]</sup>.

Digital services are defined in the **Law on Electronic Commerce**<sup>[204]</sup>. Information society services are provided for at a certain fee, at a distance and via electronic means, on personal request from service recipients<sup>[205]</sup>. This law reflects provisions from Directive 2000/31 on Electronic Commerce, including prevention-related responsibility of certain service providers, which could include some online platforms, to eliminate illegal content upon complaints lodged (notice and take down). These rules, which concern responsibility and measures to be taken by platforms when notified about illegal content, inter alia, will be subject to revision with the EU Digital Services Act. In 2022, a **new Law on Consumer Protection**<sup>[206]</sup> was harmonized with the most recent EU Directives in this area, which to a great extent regulate issues related to the digital age and aim to better implement protection and modernize the protection rules of Union consumers (CELEX No. 32019L2161).

The legal framework on the protection of fundamental rights is partially aligned with the EU acquis and European standards on fundamental rights. Regarding **protection against discrimination**, the **Law on Protection and Prevention of Discrimination**<sup>[207]</sup> from 2020 ensures compliance with directives No. 2000/78/EC, 2004/113/EC, and 2006/54/EC of the Council. It concerns the implementation of the principle of equal treatment of men and

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[202] Law on Protection of Personal Data ("Official Gazette of RNM" no. 42/20 and 294/21): [https://azlp.mk/azlp/propisi-i-dokumenti/domasni\\_propisi/](https://azlp.mk/azlp/propisi-i-dokumenti/domasni_propisi/)

[203] Personal Data Protection Agency, "Personal Data Protection Agency Home," Агенција за заштита на личните податоци, accessed April, 2024, <https://azlp.mk/en/>.

[204] Law on Electronic Commerce ("Official Gazette of the Republic of Macedonia" No. 133/2007, 17/2011, 104/2015 and 192/2015 and "Official Gazette of the Republic of North Macedonia" No. 31/2020).

[205] Article 3, item 1 of the Law on Electronic Commerce ("Official Gazette of the Republic of Macedonia" No. 133/2007, 17/2011, 104/2015 and 192/2015 and "Official Gazette of the Republic of North Macedonia" No. 31/2020).

[206] Law on Consumer Protection ("Official Gazette of the Republic of North Macedonia" No. 236/2022)

[207] Law on Protection and Prevention of Discrimination ("Official Gazette of the Republic of North Macedonia" No. 258/2020)

women in accessing and providing goods and services, as well as in applying the principle of equal opportunities and treatment of men and women in the field of employment and professions. Special attention should be given to promoting non-discrimination, increasing effectiveness in addressing hate crime and hate speech, strengthening the capacity and independence of institutions in charge. The **Commission for Protection against Discrimination**, whose seven members are elected by the Assembly of North Macedonia, holds responsibility for promoting, protecting, and preventing equality, human rights, and non-discrimination. Additionally, it monitors the implementation of the Law and provides opinions and recommendations.

At the end of 2018, North Macedonia adopted the **National Strategy for Cybersecurity 2019–2023** marking the initiation of regulation in cyber defense and the enhancement of all related capacities. Consequently, regulations, procedures, and protocols regarding cyber defense, along with other aspects of cybersecurity, remain incompletely defined. Additionally, in 2020, the **Cyber Defense Strategy** was adopted in alignment with the National Cyber Security Strategy, the Cyber Security Strategy of the European Union, and the NATO Cyber Security Policy. This strategy aims to ensure a secure, safe, reliable, and resilient digital environment.

The **National ICT Strategy (2023-2027)**<sup>[208]</sup> of North Macedonia has been prepared and submitted for consultation with stakeholders, but it has not yet been adopted. It is based on four basic pillars, which include digital connectivity and ICT infrastructure, the development of digital skills among citizens, the development of digital government, as well as enhanced support for the digitalization of businesses and encouragement of digital innovations. Another related document is the **Concept for Digital Transformation of Society**<sup>[209]</sup> prepared by the **National Council for Digital Transformation of Society**. This concept is foreseen to establish an 'Agency for digitalization' (referred to above as Agency for Security of Network and Information Systems and Digital Transformation) with competencies including the Coordination of activities, including collection, processing, and storage of data among all government institutions; coordination for the preparation of laws; Management of the secure data exchange environment; d) standards setting for ICT and cybersecurity for all stakeholders; general guidelines for change management during the digital transformation of administration and public awareness. The basis for the establishment of the 'Agency for digitalization' is laid out in the new draft **Law for Network and Information Systems Security and Digital Transformation**.

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[208] Government of the Republic of North Macedonia, Ministry of Information Society and Administration, "Национална ИКТ Стратегија На Република Северна Македонија 2023-2027 Година, Драфт Верзија" (Government of the Republic of North Macedonia, December 2022), [https://ener.gov.mk/PublicDocuments/Национална%20ИКТ%20Стратегија%20за%202023%20-2027%20година%20-%20Драфт\\_Нацрт\\_id=46\\_version=1.pdf](https://ener.gov.mk/PublicDocuments/Национална%20ИКТ%20Стратегија%20за%202023%20-2027%20година%20-%20Драфт_Нацрт_id=46_version=1.pdf).

[209] Government of the Republic of North Macedonia, "КОНЦЕПТ За Дигитална Трансформација На Општеството," accessed April 2024, <https://vlada.mk/sites/default/files/dokumenti/konceptdt.pdf>.

Additionally, in the field of **e-government**, the following legal framework is relevant: **Law on Electronic Management and Electronic Services; Law on Electronic Documents, Electronic Identification and Confidential Services; Law on Central Population Register; Law on Free Access to Public Information**. The legal framework refers to the digitalization of processes and procedures in state institutions, as well as the digitalization of public services.<sup>[210]</sup>

## State actors and the harmonization with the DSA

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Explaining responsible state actors and harmonization with the Digital Services Act and Digital Market Act in North Macedonia involves understanding the roles of governmental bodies in regulating and ensuring responsible behavior in the digital and media sphere.

**The Ministry of Information Society and Administration** (MISA) plays a crucial role in creating an enabling environment in the society for various aspects of information and communication technologies (ICT), including the development of policies, and strategies, and initiatives related to the media sector. Furthermore, the **Ministry of Economy** is responsible for developing policies and strategies related to e-commerce, including regulations and laws that govern online trade. Ensuring consumer protection in e-commerce transactions is another responsibility of the Ministry of Economy.

The progress of electronic communications and the information society is monitored by several institutions in North Macedonia, including the **MISA** and the **Agency for Electronic Communications**. Likewise, the **National Office for Broadband Competence** serves as an expert and advisory body supporting investments in broadband networks. The **Macedonian Academic Research Network** (MARnet), founded in 2010 as a public institution, is responsible for the development, organization, and management of a unique educational and research telecommunications network in North Macedonia. MARnet is also responsible for the organization and management of the Macedonian .MK domain and the Macedonian .MKD domain.

The responsible institutions in the media sphere include the **Agency for Audio and Audiovisual Media Services** (AAAMS) and **Broadcasting Council**. The AAAMS is responsible for regulating and supervising the audio and audiovisual media services sector in accordance with the Law on Audio and Audiovisual Media Services. The **Broadcasting Council** is an independent regulatory body responsible for overseeing the operations of broadcast media in North Macedonia. It ensures compliance with laws and regulations, promotes media pluralism, and protects freedom of expression.

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[210] Metamorphosis Foundation, "DIGITAL AGENDA OBSERVATORY – Country Report and Roadmap for Digital Agenda Advancement in North Macedonia (2022) - Metamorphosis," *Metamorphosis - Foundation for Internet and Society*, June 28, 2022, [https://metamorphosis.org.mk/en/izdanija\\_arhiva/digital-agenda-observatory-country-report-and-roadmap-for-digital-agenda-advancement-in-north-macedonia-2022/](https://metamorphosis.org.mk/en/izdanija_arhiva/digital-agenda-observatory-country-report-and-roadmap-for-digital-agenda-advancement-in-north-macedonia-2022/).

The current position of institutions and their responsibility in complying with the DSA is also stated by representatives of the Government MISA, and AEC, who have in the interview and written communication for this research stated that “The Ministry of Information Society and Administration, as policy maker in the field of digital services and media, should be the responsible institution, working closely with the Ministry of Economy, which holds responsibility for consumer protection policies and laws.”<sup>[211]</sup> Contrary to this, for the success of the process, a representative from civil society believes that it is necessary to form an “inter-ministerial working group composed of representatives from several institutions”<sup>[212]</sup>

## Non-state actors and the initiatives to address DSA-related issues

Non-state actors, such as civil society organizations, academic institutions, and private sector entities in North Macedonia possess specialized knowledge and expertise in data governance, privacy, transparency, media regulation, and technology. Their involvement would bring innovative ideas and solutions to address DSA-related challenges effectively. Also, their involvement in implementing initiatives aimed at addressing DSA-related issues is crucial for promoting responsible data sharing practices, protecting individuals’ rights, and fostering innovation and development in the digital era.

There are informal thematic networks of civil society organizations, such as Increasing Civic Engagement in the Digital Agenda (ICEDA), The Anti-Disinformation Network for the Balkans, the Network against Hate Speech in the Media, etc. Several projects have been identified, such as “EU for Freedom of Expression: Alignment of national media legislation with EU acquis and media standards” with the overall objective of “enabling a legal environment that will promote freedom of expression, competitiveness, and sustainability of the media market through the harmonization of media legislation with the Audiovisual Media Services Directive (EU) 2018/1808, but information is missing for all segments<sup>[213]</sup>.”

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[211] For research purposes, a questionnaire with adapted questions was sent to relevant institutions, including the Government, MISA, and AEC, to indicate which institution, according to them, should be responsible for harmonizing and preparing the domestic legal framework regarding the DSA. The responses from MISA and the Government were received by email on 13.03.2024, whereas the interview with the representative of AEC was conducted in person on 13.03.2024.

[212] Snezhana Trpeska, PhD, RESIS Institute, “Answers to Questionnaire,” March 7, 2024.

[213] The interviewed civil society organizations, Center for Change Management and Konekt, point out that they have not been in contact with any of the proponents regarding the implementation of the EU Digital Services Act (DSA) in North Macedonia or the Western Balkans region.



Currently, based on an analysis of available information, a coordinated approach by non-state actors is missing. It will be necessary for civil society, academic institutions, and the private sector to build a multi-stakeholder coalition with regional representation to actively participate in and monitor the mapping of digital preparedness in individual countries and the regional market<sup>[214]</sup>.

## Institutional readiness and the independence of competent institutions and a broader set of concerns related to the implementation of the DSA

Although the harmonization process is gradually being implemented, such as the amendments to the Law on Audio and Audiovisual Media Services adopted in July 2023, alignment with the DSA and DMA needs to be stepped up to provide predictability for the business community. **The Ministry of Information Society and Administration** needs to strengthen its capacity to drive digital transformation and media reforms. It is necessary for MISA to provide technical infrastructure and to enhance its expertise, as well as its financial and human capacities, in the field of digital transformation. The full independence of the regulator for electronic communications (AEC) needs to be ensured<sup>[215]</sup>.

Aside from the prepared **Draft Law for the Agency for Security of Network and Information Systems and Digital Transformation**, respondents believe that the competences of the **Agency for Audio and Audio-visual Services** could be extended to implement and monitor the DSA. “This agency already possesses the authority to protect citizens’ interests in the field of audiovisual media services and to ensure the protection of minors. It is expected that the competence of this agency will be extended to encompass all mass media, including online media, for which they are currently not competent”<sup>[216]</sup>. On the other hand, and as already noted, the MISA suggested that the not yet established Agency **for Security of Network and Information Systems and Digital Transformation**, could open up a space for policy negotiations and discussions. There, the concerns raised by other experts interviewed in the process and the overall CSO and private sector, as well as the media expertise could be voiced. Among others, concerns have been raised regarding the

[214] Working Group on Digitalization and Connectivity, “Civil Society Forum, Tirana 2023: Key Recommendations of the Thematic Working Group on Digitalization and Connectivity” (Tirana, Albania: Open Society Foundations Western Balkans, Cooperation and Development Institute, Eliamep, October 2023), [https://www.wb-csf.eu/docs/03\\_Key-Recommendations-of-the-Thematic-Working-Group-on-Digitalization-and-Connectivity.pdf](https://www.wb-csf.eu/docs/03_Key-Recommendations-of-the-Thematic-Working-Group-on-Digitalization-and-Connectivity.pdf).

[215] European Commission, “Commission Staff Working Document: North Macedonia 2023 Report.”

[216] Representative of the Government of North Macedonia, Member of the Cabinet of the Vice President for Good Governance, “Answers to Questionnaire,” March 13, 2024.

independence **of the new Agency for Security of Network and Information Systems and Digital Transformation**, as outlined in the proposal for **the Law on Network and Information Systems Security and Digital Transformation**.

The future appointment of the director and the five members of the commission is stipulated to be carried out by the Government, potentially exposing them to political influence and jeopardizing their independence.

According to the information received from the individuals interviewed<sup>[217]</sup> from the government, including the Ministry of Information Society and Administration, the Agency for Electronic Communications, representatives from civil society, the Council for Ethics in the Media, and experts, concerns mainly revolve around the lack of financial and human resources for a coordinated process; the lack of transparency and inclusiveness in the process; and the existence of political influence within the process. Additionally, concern was expressed regarding the further implementation and monitoring of the already transposed part of the regulation.

The interviewees also highlight concerns about the insufficiently developed technical infrastructure in the country and the need for greater cooperation and coordination with EU institutions.

## Recommendations to address the concerns

The recommendations are based on the desk research conducted, the statements of the interviewed persons, and are cross-referenced with the given **Key Recommendations of the Thematic Working Group on Digitalization and Connectivity**<sup>[218]</sup>. These recommendations should be highlighted as they stem from consultations with over 30 participants from organizations and institutions working in areas such as digital rights, media development, information integrity, democracy building, fact-checking, technology, and others. The group focused on the DSA and the CoP, and regulatory and self-regulatory instruments developed in the framework of the EU and EEA markets to create a safer online environment and better protection of users on VLOPs and VLOSEs.

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[217] See Annex 1: List of interviewees.

[218] Wider consultations were also held with 79 stakeholders like representatives of EU institutions, institutions of the governments in the region and EU based NGOs. Closed consultation meetings were also held, one with a group of CSO members of European Digital Rights Initiative (EDRI) and another with members of the SEECheck network. The group facilitators (for preparation of the Recommendations) had advocacy meetings with representatives of EU institutions in Brussels, German ministries in Berlin, and individual meetings with decision makers, both at Bled Strategic Forum, and through visits to institutions in the region. UG Zašto ne facilitated the consultation process, alongside a core group of experts from each of the six Western Balkan countries. Working Group on Digitalization and Connectivity, “Civil Society Forum, Tirana 2023: Key Recommendations of the Thematic Working Group on Digitalization and Connectivity.”



In the absence of an updated version of **the National Program on Adoption of the EU Acquis** in North Macedonia, it is necessary for the government to prepare a roadmap for harmonizing the legislation with the DSA and DMA to ensure a transparent process, which is also a fundamental principle in the DSA and the DMA.

The government, specifically the competent ministries such as MISA, should aim for greater visibility concerning the implementation of numerous laws and strategic documents crucial for compliance with the DSA and DMA. This will contribute to the transparency and inclusiveness of the process.

The government should appoint a spokesperson that citizens will recognize and who will regularly report on the progress regarding the implementation of the DSA and DMA. This is necessary to raise public awareness of the benefits of the DSA and DMA, as well as to bring the issue closer to citizens.

The government should invest resources in institutions to overcome lack of human resources, outdated technical capabilities, or their complete absence.

Civil society, together with academic institutions and the private sector, is necessary to build a multi-stakeholder coalition with regional representation to actively participate in and monitor, but also to learn from each other in the process of complying with the DSA and DMA.

## Digital Service Coordinator: challenges and opportunities

In setting up the DSC, North Macedonia needs to determine its coordination role and arrange competencies so it will act as a complaints body for all users. Furthermore, it should vet researchers seeking data access to platforms and have the capability to certify out-of-court dispute resolution bodies, among its other responsibilities. As stated above, a potential DSC in North Macedonia is envisioned in a new draft **Law for Network and Information Systems Security and Digital Transformation** that has not been adopted. At the moment, it is uncertain whether the proposed law will be adopted with the change of government in North Macedonia.

The challenges facing the DSC can be grouped into several categories.

- › When planning the establishment of a new body to assume the role of DSC, there should be a broad consultation process with stakeholders. It is necessary to pay attention to the competencies that other agencies in this area have in North Macedonia.

- › The legal framework itself and the capacities of the DSC members pose challenges as they have to navigate complex regulatory environments.
- › Civil society, media organizations, academia, independent researchers, and other relevant institutions can contribute with their relevant expertise and experience in dealing with different aspects of digital services and platforms and need to be meaningfully included in the work of the DSC<sup>[219]</sup>. Their involvement brings innovative ideas and solutions to address DSC-related challenges effectively.

## Thinking Forward: Future Operational Models of Multi-Stakeholder Digital Service Coordinator Body

In the context of North Macedonia, predicting the future operational model for a multi-stakeholder DSC body requires a forward-thinking approach. The DSC must navigate the complexities of a rapidly evolving digital landscape while also serving the diverse needs of stakeholders. Taking into account the formal requirements outlined in the DSA and what has already been established in the member states of the Union, it is particularly important for a candidate country for the EU, such as North Macedonia, to adhere to the following parameters during the formation of the DSC:

- › Independence by law and design - The legal foundations should ensure transparency in the operations of the DSC, which would bring in and maintain a high level of trust from the public. Therefore, it is crucial for an existing or newly formed body or agency to be independent from the government. This entails having its own budget, be established by the parliament, and regularly update the parliament on its activities.
- › Platform experts and data science - The DSC needs to develop expertise as a platform research center with a dedicated research budget. It should possess the necessary knowledge to comprehend the systemic platform risks that the DSA aims to mitigate. For instance, the future DSC should prioritize recruiting and retaining talent well-versed in content moderation, human rights impact assessments, fact-checking, and risk management.

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[219] Working Group on Digitalization and Connectivity, “Civil Society Forum, Tirana 2023: Key Recommendations of the Thematic Working Group on Digitalization and Connectivity.”

- › Expert advisory council - For the advisory council to function effectively, it is necessary to clearly define its roles and tasks, incorporate diverse perspectives, and delineate its responsibilities from those of the DSC. Establishing such a structured, continuous forum for exchange can further enhance confidence in the supervisory work of the DSC.

# Country overview: Montenegro

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## Legislative and institutional framework relevant to the implementation of the DSA

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Article 18 of the Law on Electronic Commerce provides exemptions from liability for intermediaries, particularly those solely transmitting electronic messages or enabling access to communication networks. In Montenegro, explicit legislation directly addressing all aspects of the Digital Services Act (DSA) related to Intermediary Service Providers (ISPs) is lacking. However, certain existing laws and regulations provide a foundation for compliance and ongoing harmonization efforts with European standards in the digital domain. To some degree, these laws cover transparency in service provision, user protection, online content moderation, regulatory oversight, and administrative penalties, and can be used as a starting point for further harmonization with the DSA, contributing to a safer digital environment.

The legal landscape governing ISPs is primarily shaped by the **Law on Electronic Commerce**<sup>[220]</sup>, which provides the foundation for compliance with DSA principles. This law, last amended in 2013, aligns with EU directives and emphasizes transparency in service provision and user protection. To ensure transparency in service provision and clear information that users must have about the service provider, Article 7 of the Law clearly defines the data that the service provider must make available to users and competent state authorities. This includes information about the service provider's identity, contact details, and business registration. Article 9 regulates unsolicited commercial messages, requiring prior user consent and clear identification upon receipt. This provision aims to protect users from spam and intrusive marketing practices, in line with DSA requirements. ISPs are shielded from liability for third-party content transmission, aligning with DSA principles of intermediary liability protection. Additionally, the law stipulates that data retention is allowed only at the time of message transmission and not thereafter, emphasizing the importance of data privacy and limiting ISP obligations regarding data retention.

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[220] Catalog of Regulations of the Union of Employers of Montenegro, *The Law on Electronic Commerce* "Official Gazette of the Republic of Montenegro", No. 80/2004, "Official Gazette of Montenegro", No. 41/2010, 40/2011, and 56/2013, retrieved from <https://t.ly/R5nsF> on 05 April 2024

In parallel, the **Law on Electronic Communications**<sup>[221]</sup> indirectly addresses certain reporting obligations for operators, complementing the DSA's emphasis on transparency and accountability. Article 30 of this law mandates operators to provide various data to the regulatory agency, including financial information and details regarding network or service development impacting wholesale services. While not explicitly aligned with DSA reporting standards, this provision establishes a mechanism for regulatory oversight and data provision in the telecommunications sector, which may influence reporting practices within the digital services landscape.

Concerning online content moderation, the **Law on Electronic Media**<sup>[222]</sup> indirectly addresses this aspect through Article 26. This provision mandates internet publication founders (e.g. online media) to promptly remove comments containing illegal content or violating legally protected rights upon becoming aware of them or receiving reports, with a maximum response time of 60 minutes. In addition, article Articles 85 and 86 of the regulation prohibit various forms of deceptive and harmful commercial audiovisual communications. Article 85 forbids covert and manipulative messages, protecting human dignity and preventing the promotion of discrimination, hatred, dangerous behavior, environmental harm, and misleading content. At the same time, Article 86 focuses on protecting minors from material and immaterial harm by prohibiting exploitative advertising tactics that manipulate their inexperience, trust, and susceptibility. Even though these provisions are not specifically tailored to ISPs, as they are defined under the DSA, but instead refer to commercial audiovisual communications, they can contribute to creating a safer online environment by addressing illegal content dissemination and ensuring prompt action against violations. This can provide a basis for aligning with the DSA in the content moderation area.

It should be noted that the non-compliance of Montenegrin legislation with European Audiovisual Media Services Directive (AVMSD) directives has led to the suspension of Montenegro from the MEDIA sub-program (Creative Europe program).<sup>[223]</sup>

Montenegro's **Consumer Protection Law**<sup>[224]</sup> contains provisions indirectly related to online content moderation and user protection in digital transactions. These provisions

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[221] Official Government of Montenegro Website, *Law on Electronic Communications* "Official Gazette of Montenegro", No. 040/13 of 13.08.2013, 056/13 of 06.12.2013, 002/17 of 10.01.2017, 049/19 of 23.08.2019, retrieved from <https://t.ly/BafoK> on 05 April 2024

[222] Official Government of Montenegro Website, *Law on Electronic Media* "Official Gazette of Montenegro", No. 046/10 of 06.08.2010, 040/11 of 08.08.2011, 053/11 of 11.11.2011, 006/13 of 31.01.2013, 055/16 of 17.08.2016, 092/17 of 30.12.2017, 082/20 of 06.08.2020, retrieved from <https://t.ly/kL1Qv> on 05.04.2024

[223] Portal Analitika, *The Ministry regarding exclusion from the MEDIA sub-program: We are making additional efforts to lift the suspension as soon as possible*, published on 12 February 2024, retrieved from <https://tinyurl.com/bdenfkp2> on 06 April 2024

[224] Official Government of Montenegro Website, *Consumer Protection Law* "Official Gazette of Montenegro", No. 2/2014, 6/2014, 43/2015, and 70/2017, as retrieved from <https://t.ly/l2u-C> on 05 April 2024

include certain measures aimed at preventing deceptive practices, ensuring fair treatment of consumers, and addressing disputes arising from online transactions. Such measures contribute to a safer online environment for users and align with DSA's objectives of enhancing consumer protection in digital transactions.

It is important to note that regulations obligating online platforms to suspend services under specific conditions changed with the **Decision by the Constitutional Court in 2019**.<sup>[225]</sup> Article 145 paragraph 4 of the Law on Electronic Communications, which previously mandated operators to block access to certain numbers and services upon the request or initiative of the Agency, was abolished. This provision, aimed at addressing fraud or abuse cases, was repealed due to legal disputes against the Agency and constitutional assessment initiatives. The decision derived from an incident where the Agency, on the day of elections in 2016, blocked Viber for several hours to prevent the spread of hate speech, which led to controversies regarding the regulation's compatibility with constitutional principles<sup>[226]</sup>. As a result, the legal framework governing the suspension of services by online platforms or ISPs has undergone revisions, highlighting the importance of balancing regulatory measures with constitutional rights and principles.

Regarding the verification of the traders, there is no clear existence of mandatory legal acts specifically relevant to the DSA; however, there are pieces of legislation that can be associated with this aspect, such as the **Law on Electronic Identification and Electronic Signature**<sup>[227]</sup>, which governs electronic identification processes, and the **Law on Electronic Document**<sup>[228]</sup>, which regulates electronic document management. The **Regulation outlining detailed conditions for qualified trust service providers**<sup>[229]</sup> covers various aspects such as issuing qualified certificates for electronic signatures and seals, website authentication, and electronic time stamps. There are two certification bodies: GOV.CA for issuing certificates to state administrative bodies and Pošta CA (Postal Agency), which issues digital certificates for citizens and businesses.

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[225] Agency for Electronic Communication and Postal Services Website, *The Decision of the Constitutional Court of Montenegro abolishing the provision of Article 145, paragraph 4 of the Law on Electronic Communications "Official Gazette of Montenegro"*, No. 40/13 and 2/17, retrieved from <https://tinyurl.com/ytk9xpv3> on 06 April 2024

[226] Portal RTCG, *The condemnation of blocking Viber and WhatsApp*, published on 16 October 2016, retrieved from <https://tinyurl.com/mum3jznc> on 06 April 2024

[227] Official Government of Montenegro Website, *Law on Electronic Identification and Electronic Signature "Official Gazette of Montenegro"*, No. 31/2017 and 72/2019, retrieved from <https://tinyurl.com/yc2huwfs> on 06 April 2024

[228] Official Government of Montenegro Website, *Law on Electronic Document "Official Gazette of Montenegro"*, No. 132/2022, retrieved from <https://tinyurl.com/3xrbw69m> on 06 April 2024

[229] Official Government of Montenegro Website, *Regulation on the manner of providing electronic trust services and qualified electronic trust services for state administrative bodies "Official Gazette of Montenegro"*, No. 20/2020, retrieved from <https://tinyurl.com/ymp3h7ra> on 06 April 2024

Montenegro's legal framework encompasses various laws and regulations prescribing administrative penalties for violations, including the Consumer Protection Law, Law on Electronic Commerce, Law on Electronic Media, Law on Electronic Communications, Competition Protection Law, Law on Electronic Document, and Law on Electronic Identification and Electronic Signature, etc.

In terms of alignment with the DSA, Montenegro's legal framework is primarily shaped by laws such as the Law on Electronic Commerce, the Law on Electronic Communications, and other corresponding provisions. It prescribes intermediary limited liability protection and ensures transparency in service provision. Additionally, it mandates user protection, including measures against unsolicited commercial messages. While indirectly addressing online content moderation, laws mandate the prompt removal of illegal content for online media, among others, potentially contributing to a safer online environment. Consumer protection in digital transactions is reinforced through relevant provisions in the Consumer Protection Law. Additionally, the framework establishes mechanisms for regulatory oversight and reporting, although not explicitly aligned with DSA standards, and highlights the importance of balancing regulatory measures with constitutional rights. Existing legislation on electronic identification and document management also contributes to the integrity of digital transactions. Administrative penalties for violations are prescribed across various laws, underpinning enforcement efforts and fostering compliance in the digital domain.

## State actors and the harmonization with the DSA

According to the legal framework outlined in the previous section, state actors in Montenegro regarding DSA compliance include the **Agency for Electronic Media, the Agency for Electronic Communication and Postal Services, the Agency for Personal Data Protection and Free Access to Information, the Competition Protection Agency**, and the Consumer Protection Council. These agencies oversee aspects such as media content regulation, fair market competition, data privacy, access to information, and consumer rights protection, all of which are integral to DSA compliance.

Several ministries are also crucial for pushing forward harmonization efforts with the DSA. These include the **Ministry of Culture and Media**, responsible for aligning media laws and implementing Montenegro's Media Strategy, **the Ministry of the Interior**, directly responsible for GDPR and electronic identity card implementation, and the **Ministry of Public Administration**, which leads the coordination of

digital transformation efforts. **The Prime Minister's Cabinet** prioritizes digital transformation, reflecting its significance at the highest level of government.

Other ministries, such as Human and Minority Rights, Science and Innovation, European Affairs, Economic Development, Foreign Affairs, and Finance, also play essential roles as stakeholders in national-level institutions concerning DSA harmonization.

In the context of DSA harmonization and the relevant state stakeholders, several strategic frameworks should be observed as well: **The Digital Transformation Strategy**<sup>[230]</sup> represents a developmental framework defining the conditions and initiatives necessary for rapid adaptation to an increasingly complex digital environment. **The Cybersecurity Strategy**<sup>[231]</sup> anticipates the formation of a cybersecurity agency. However, such an agency has not yet been established as the Law on Information Security is in its final stages of aligning with the legal framework of NIS 2 Directive<sup>[232]</sup>. It is important to note **the Media Strategy**<sup>[233]</sup>, as it aims to contribute to the adoption and implementation of the highest international standards in the field of freedom of expression, alignment with EU policies, and the creation of a favorable environment for sustainable and unimpeded media work. Last is the **Smart Specialization Strategy**<sup>[234]</sup>, which addresses a new model of economic development at the national or regional level based on targeted support for scientific research and innovative activities.

## Institutional readiness and the independence of competent institutions

The insights derived from interviews with representatives of relevant actors in Montenegro shed light on the challenges related to the implementation of the Digital Services Act. **It was noted that there have not been any active or planned initiatives in this aspect at the current moment by the represented institutions or the capacity buildings. However, all of the interviewees highlighted the need for such activities in the future.**

[230] Official Government of Montenegro Website, *Strategy for Digital Transformation of Montenegro 2022-2026*, retrieved from <https://tinyurl.com/54ewctus> on 06 April 2024

[231] Official Government of Montenegro Website, *Strategy for Cybersecurity of Montenegro 2022-2026*, retrieved from <https://tinyurl.com/zycpp984> on 06 April 2024

[232] EUR-Lex, Directive (EU) 2022/2555 of the European Parliament and of the Council, retrieved from <https://shorturl.at/nrPZ3> on May 12 2024

[233] Official Government of Montenegro Website, *Media Strategy of Montenegro 2022-2026*, retrieved from <https://tinyurl.com/3tb3a5tv> on 06 April 2024

[234] Official Government of Montenegro Website, *Smart Specialization Strategy of Montenegro 2019-2024*, retrieved from <https://tinyurl.com/4m846bwr> on 06 April 2024



Firstly, the limited capacity identified by stakeholders, including the Media Directorate, the Agency for Electronic Media, and the Agency for Electronic Communications and Postal Services<sup>[235]</sup> is a significant challenge. Both human and financial resources are deemed essential to effectively address compliance with the DSA and other digital regulations.

**The interviewees<sup>[236]</sup> emphasized the importance of collaboration among stakeholders in achieving harmonization with the DSA.** Given the limited capacities within individual institutions, collaborative efforts involving representatives from institutions, civil society, and the academic community are said to be crucial. The plan to establish a separate working group specifically dedicated to the DSA signifies a proactive step towards fostering collaboration and expertise-sharing in addressing compliance challenges. According to the information provided from the interview, without indicating any specific scope or timeline for this, or the date for starting the initiative, the working group will be propelled by the Ministry of Culture and Media<sup>[237]</sup>. It should be noted that while the Agency for Electronic Communications and Postal Services has received some information about the DSA through its participation in BEREC,<sup>[238]</sup> other entities are still in the process of getting acquainted with the legislation.

The independence of regulatory bodies such as the Agency for Electronic Communications and Postal Services, the Agency for Personal Data Protection and Free Access to Information, and the emerging Cybersecurity Agency is essential for addressing the DSA. Key laws safeguard this independence, including the Law on Electronic Communications, Personal Data Protection, Free Access to Information, Electronic Media, and Information Security. However, recent legislative proposals aimed at altering the selection procedures for regulatory bodies, such as the Agency for Electronic Communications and Postal Services<sup>[239]</sup>, highlight ongoing attempts to influence their autonomy.

## Non-state actors and the initiatives to address DSA-related issues

As the Digital Services Act (DSA) is relatively new, even for EU member states, there have been no identified non-state initiatives specifically addressing this topic in Montenegro through desk research nor through interviews with the relevant stakeholders. Within

[235] Representative from the Center for Democratic Transition in discussion with the author on 22 March 2024

[236] Representative from the Agency for Electronic Media, in discussion with the author on 11 March 2024

[237] Representative from the Media Directorate (Ministry of Culture and Media) in discussion with the author on 27 March 2024

[238] Representatives from the Agency for Electronic Communication and Postal Services, in discussion with the author on 18 March 2024

[239] Radio Rožaje, *MPs should not adopt amendments to the Law on Electronic Communications*, an article published on 15 January 2024, retrieved from <https://tinyurl.com/zj88835c> on 06 April 2024

the civil society sector, organizations specialized in digital environment topics are scarce. Although several initiatives tackle issues like disinformation and hate speech online, none have focused specifically on the DSA.

However, it's worth noting the platform [Raskrinkavanje.me](https://raskrinkavanje.me)<sup>[240]</sup>, operated by the NGO Center for Democratic Transition (CDT). It is part of the International Fact-Checking Network (IFCN) and the European Fact-Checking Standards Network (EFCSN) and adheres to the European Code of Standards for Fact-Checking Organizations. It also serves as a Facebook partner in Montenegro within Facebook's Third Party Fact-Checking program, which makes them potential trusted flaggers under the Digital Services Act.

## A broader set of concerns related to the implementation of the DSA

Apart from the already mentioned challenges, the unstable political situation in Montenegro in the recent past, coupled with frequent changes in decision-makers at all levels, has resulted in a slowdown of numerous processes related to the implementation of existing strategies and other activities and the adoption of new ones. This is particularly significant concerning the digital sphere, where changes occur daily. Additionally, the lack of intersectoral communication significantly hampers the alignment of horizontal processes, as expected in the digital landscape.

Despite the recognition of the Ministry of Public Administration as the coordinating body for digital transformation and the Ministry of Culture and Media as the address for all content-related matters, the current distribution of responsibilities within the Montenegrin public administration system does not centralize issues related to the Digital Services Act. Instead, it emphasizes close collaboration among sectors and departments, which have not yet demonstrated efficient communication in this context.

There is also still a lack of understanding among decision-makers regarding the interdependence of acts such as the NIS2 Directive, which Montenegro has fully harmonized with<sup>[241]</sup>, the GDPR, whose draft has been awaiting adoption for five years, and the transposition of AVMSD, also pending adoption, with the DSA.

[240] Official Website, *Raskrinkavanje. me*, retrieved from <https://tinyurl.com/kkp8f685> on 06 April 2024

[241] Official Government of Montenegro Website, *Kompan: Montenegro to remain on the path of EU integration*, article published on 15 March 2023, retrieved from <https://tinyurl.com/4antj6ud> on 06 April 2024

## Recommendations to address the concerns

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Montenegro faces significant challenges in effectively implementing the DSA. These challenges encompass resource constraints, concerns regarding regulatory autonomy, and administrative complexities. Addressing these obstacles is imperative to ensure the successful harmonization with the DSA framework. Therefore, the following recommendations are proposed to navigate these challenges effectively:

- › **Enhancing institutional capacity:** Allocating sufficient human and financial resources to relevant institutions to enhance proficiency in comprehending and enforcing the provisions of the DSA.
- › **Fostering collaborative engagement:** Promoting interdisciplinary collaboration among governmental bodies, civil society organizations, and academic institutions through dedicated forums to facilitate knowledge exchange and promote alignment in DSA implementation efforts.
- › **Safeguarding regulatory independence:** Upholding the autonomy of key regulatory entities involved in executing DSA mandates by fortifying legal frameworks that shield against influence or interference.
- › **Addressing governance and administrative complexities:** Streamlining decision-making processes and enhancing interdepartmental communication to mitigate bureaucratic inefficiencies and ensure coherent coordination in DSA-related initiatives.
- › **Promoting regional cohesion:** Fostering regional cooperation among Western Balkan countries to harmonize approaches to DSA compliance and leverage collective bargaining power in engagements with major tech corporations. The regional approach was also addressed by all interviewees as an important aspect that has yet to be discussed when it comes to these efforts, as the countries of the Western Balkans are not big enough markets to make an impact related to the big tech companies on their own.

## Digital Service Coordinator: challenges and opportunities

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Currently, there are no ongoing initiatives or outlined strategies for undertaking comprehensive work on implementing the DSA in Montenegro. Considering the overall context for digital transformation in the country, here are the challenges that the Digital Services Coordinator might face:

- › Limited institutional capacity and interdepartmental coordination gaps: Insufficient human and financial resources may impede the effective implementation of DSA provisions. In addition, inadequate communication within the public administration system may hinder processes and coordination efforts.
- › Regulatory compliance complexity and political instability: Navigating the legal framework of the DSA and other regulations can pose challenges for enforcement and interpretation. Additionally, frequent leadership changes could disrupt initiatives and regulatory continuity.
- › Regional cooperation disparities: Aligning DSA compliance approaches among Western Balkan countries may be challenging due to differing priorities and agendas.

#### Opportunities that might arise for the Digital Service Coordinator:

- › Regulatory guidance and compliance assistance: Providing clear and comprehensive guidance to stakeholders on complying with DSA regulations while offering support to businesses and service providers in understanding and implementing DSA requirements.
- › Enforcing coordination and stakeholder engagement: Coordinating with regulatory agencies and law enforcement authorities to improve DSA enforcement. It is important to coordinate with regulatory agencies and law enforcement that can help investigate DSA violations, ensure providers follow rules, and provide cybercrime expertise for digital security. Additionally, initiating dialogue among government agencies, industry associations, and civil society organizations to promote collaboration and address emerging challenges.
- › Capacity-building initiatives and best practice dissemination: Developing training programs to enhance regulatory agencies' capacity and sharing best practices and lessons learned from DSA implementation.
- › International cooperation: Engaging in international cooperation initiatives strengthens regulatory approaches and fosters cross-border cooperation in regulating digital services.

## Thinking Forward: Future Operational Models of Multi-Stakeholder Digital Service Coordinator Body

**The representatives of institutions and regulators who participated in the research emphasized the importance of cooperation with civil society organizations in the digital transformation process, especially considering the expertise possessed by the civil sector.** In this domain, it was mentioned several times that due to capacity limitations and the slowness of bureaucratic procedures inherent to the public sector, a multistakeholder approach is recognized as the best possible solution for addressing the upcoming harmonization with the DSA, as well as improving all related frameworks, both strategic and legislative.

In addition to forming a separate working body to lead the process<sup>[242]</sup>, representatives of regulators who participated in the interviews identified the possibility of several models for forming a coordination body:

- › Certain responsibilities could be distributed to existing regulators, not one in particular.
- › One of the existing regulators will take on the role of coordinator. On the other hand, the role of the Electronic Media Agency is recognized as an agency that could adapt this role to its current work and competencies, with additional capacities.
- › Forming a completely new agency based on a multistakeholder principle and responsible for the DSA, due to the complexity of the act and its horizontal nature, which covers a large number of legislative areas, was also mentioned.

It should be noted that in discussions with representatives of the Electronic Media Agency,<sup>[243]</sup> the solution is not only seen in creating a separate law addressing only DSA, it was suggested that one solution could be to map the existing legislation as a basis, and in those domains, build upon it in line with the DSA. This research can serve as a starting point for this discussion. This way, as it was explained, would be one of the ways to speed up the practical implementation, and at the same time to build that horizontal process of communication and cooperation among relevant actors.

[242] Representative from the Media Directorate (Ministry of Culture and Media) in discussion with the author on 27 March 2024

[243] Representative from the Agency for Electronic Media, in discussion with the author on 11 March 2024

# Country overview: Serbia

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## Legislative and institutional framework

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Serbia has been an official candidate for European Union membership since 2012. Since then, the country has made some progress in aligning its legislation and policies with EU standards and requirements. Serbia continues to engage in accession negotiations with the EU, with 22 out of 35 negotiation chapters opened as of early 2022. These chapters cover various aspects of EU legislation and policy. Progress in each chapter depends on Serbia's ability to meet the necessary criteria and benchmarks and to adequately align the legislation with the EU's. Under Cluster Competitiveness and Inclusive Growth, Chapter 10 is dedicated to digital transformation and media. The 2023 European Commission report on Serbia stated that: "in the e-commerce domain, alignment with the Digital Services Act and Digital Markets Act needs to be stepped up, to provide predictability for the business community"<sup>[244]</sup>.

Considering the wide range of provisions prescribed by the Digital Services Act, several Serbian laws prescribe relevant matters. **The Law on Electronic Media**<sup>[245]</sup> regulates the organization and work of the Regulatory Body for Electronic Media, conditions and manner of providing media services, as well as the basic rules of intermediary liability in line with the E-Commerce Directive. **The Law on Public Information and Media**<sup>[246]</sup> prescribes the principles of public information and public interest in public information. These two laws were adopted in October 2023 to include some of the provisions of the EU Audio-Video Media Service Directive and to provide a new definition of political advertisement, introduce provisions aimed at preventing undue interference on media, and strengthen the REM's independence. **The Law on Electronic Communications**<sup>[247]</sup> regulates the jurisdiction and work of the Regulatory Body for Electronic Communications and Postal Services, as well as the conditions and manner of conducting activities in the field of electronic communications. **The Law on Electronic Commerce**<sup>[248]</sup> regulates the conditions and manner of providing information society services, obligations to inform users of services, as well as rules regarding the conclusion of contracts in electronic form. **The Advertising Law**<sup>[249]</sup> regulates advertising rules, the content of advertising messages, and respective restrictions. Along with

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[244] European Commission, "Commission Staff Working Document: Serbia 2023 Report" (European Union, November 8, 2024), [https://neighbourhood-enlargement.ec.europa.eu/document/download/9198cd1a-c8c9-4973-90ac-b6ba6bd72b53\\_en?filename=SWD\\_2023\\_695\\_Serbia.pdf](https://neighbourhood-enlargement.ec.europa.eu/document/download/9198cd1a-c8c9-4973-90ac-b6ba6bd72b53_en?filename=SWD_2023_695_Serbia.pdf).

[245] "Official Gazette of Republic of Serbia", no. 92/2023

[246] "Official Gazette of Republic of Serbia", no. 92/2023

[247] "Official Gazette of Republic of Serbia", no. 44/2010, 60/2013, 62/2014, 95/2018, 35/2023

[248] "Official Gazette of Republic of Serbia", no. 41/2009, 95/2013, 52/2019

[249] "Official Gazette of Republic of Serbia", no. 6/2016, 52/2019

regulating the respective areas, **the Law on Personal Data Protection**<sup>[250]</sup> and **the Law on Free Access to Information of Public Importance**<sup>[251]</sup> also prescribe the jurisdiction and work of the Commissioner for Information of Public Importance and Personal Data Protection. **The Law on E-Government**<sup>[252]</sup> regulates the performance of tasks of state bodies related to the use of information and communication technologies. **The Law on Electronic Signature, Electronic Document, Electronic Identification, and Trusted Services in Electronic Business**<sup>[253]</sup> prescribe the rules that categories must meet to be lawful. **The Law on Information Security**<sup>[254]</sup> regulates measures for protection against security risks in information and communication systems.

These laws exhibit various connections to the DSA at different levels. Legislation addressing the regulation of electronic media, public information, and electronic commerce aligns with the DSA's objectives of promoting transparency, accountability, and consumer protection in the digital sphere. **The Law on Electronic Media and the Law on Public Information and Media**, for instance, reinforce principles of public information dissemination and media independence, which are essential for fostering an informed and pluralistic digital environment consistent with the DSA's emphasis on media freedom and pluralism. Similarly, **the Law on Electronic Commerce**, by regulating online commercial activities and electronic contracts, contributes to creating a trustworthy and secure online marketplace in line with the DSA's goals of ensuring fair competition and consumer confidence in digital transactions. Additionally, legislation governing advertising practices and content restrictions, such as **the Advertising Law**, complements the DSA's efforts to combat misleading or harmful online advertising, safeguarding consumers' interests and promoting fair competition among businesses.

Moreover, laws addressing e-government initiatives and electronic signatures underscore Serbia's commitment to leveraging technology for efficient public service delivery and promoting the legal validity of electronic transactions. This resonates with the DSA's objectives of fostering digital innovation and facilitating cross-border electronic transactions within the EU. Furthermore, regulations concerning information security and the protection of personal data reinforce Serbia's efforts to enhance cybersecurity measures and safeguard individuals' privacy rights, aligning with the DSA's provisions on data protection, security, and confidentiality of electronic communications.

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[250] "Official Gazette of Republic of Serbia", no. 87/2018

[251] "Official Gazette of Republic of Serbia", no. 120/2004, 54/2007, 104/2009, 36/2010, 105/2021

[252] "Official Gazette of Republic of Serbia", no. 27/2018

[253] "Official Gazette of Republic of Serbia", no. 94/2017, 52/2021

[254] "Official Gazette of Republic of Serbia", no. 6/2016, 94/2017, 77/2019

The most important strategic document for this topic is the Strategy for the Development of the Public Information System in the Republic of Serbia for the period 2020-2025 (the Media Strategy)<sup>[255]</sup>, considering that it foresees continuous harmonization with European legislation. Currently, the working group is drafting the Action Plan for the implementation of this strategy. The document is still in the working phase, but it is certain that it will also envisage the implementation of laws modeled after the DSA.<sup>[256]</sup>

## State actors and harmonization with the DSA

**At the moment of writing this analysis, there is no formal information on which ministries (or other institutions) will lead or be involved in the process of harmonization with the DSA.** However, given the current competences and jurisdictions of Serbian institutions, as well as examples from the comparative practice of EU countries, it can be assumed which institutions will be involved in this process. **Our research has shown that some institutions took a proactive approach and are preparing for their potential new roles.**

The **Ministry of Information and Telecommunication** plays a pivotal role in the implementation of the DSA due to its jurisdiction and expertise in similar legislative processes. Additionally, the ministry is currently leading the process of implementing the Action Plan for the Media Strategy, further underscoring its importance in shaping digital regulations. Meanwhile, the **Ministry of Internal and Foreign Trade** is responsible for tasks related to market regulation, consumer protection, and preventing unfair competition, all of which are related to the enforcement of DSA provisions. Given that the DSA aims to safeguard fundamental rights and principles, the involvement of the **Ministry of Human and Minority Rights and Social Dialogue** is essential. Effective coordination in the harmonization of EU regulations and standards, as well as ensuring adequate information dissemination to both the EU and the public, necessitates the active participation of the **Ministry of European Integration**. Each of these ministries plays a critical role in ensuring the effective implementation and enforcement of the DSA within Serbia's regulatory framework.

**The Regulatory Body for Electronic Media and the Regulatory Body for Electronic Communications and Postal Services** serve as integral institutions for the development and enforcement of media, internet service providers, and telecommunications regulations and are essential actors in the process of DSA

[255] "Official Gazette of Republic of Serbia", no. 11/2020

[256] Maja Zaric, Interview on DSA Readiness with Representative from the Ministry of Information and Telecommunications, April 2, 2024.



alignment. These two institutions, which are constituted by the law as independent both functionally and financially, wield public authority within their respective jurisdictions. Given the scope of their mandates and authority, as well as the precedent set by European countries in establishing National Regulatory Authorities as DSC <sup>[257]</sup>, it is probable that one of these institutions will assume this, should Serbia choose one single institution for the coordinator, instead of a multi-institutional body.

To prioritize the protection of citizens' fundamental rights, it is imperative for several independent institutions to actively participate in the process of harmonization with the DSA. This includes the **Commissioner for Information of Public Importance and Personal Data Protection**, who oversees matters related to data privacy and access to public information. Additionally, the **Commissioner for the Protection of Equality** plays a crucial role in ensuring non-discrimination and promoting equal treatment in society. Furthermore, the **Ombudsman** serves to safeguard citizens' rights and interests across various areas. By engaging these institutions according to their respective competencies, a comprehensive approach to protecting human rights within the digital sphere can be achieved.

Following the examples of European Union countries, other state actors that could be involved are the **police**, the **Commission of Protection of Competition**, and the **Consumer Protection Body**<sup>[258]</sup>.

## Non-state actors and the initiatives to address DSA-related issues

In Serbia, non-state actors have been closely monitoring the development of DSA, DMA, and their potential implications since the Acts were in their draft stages. While this engagement remains informal, with no organized collective action specifically addressing these legislative developments in our country, various non-state actors—including international organizations, civil society groups, media outlets and associations, fact-checkers, researchers, and concerned individuals—play a pivotal role in this process. Leveraging their expertise in areas such as digital rights, privacy, data protection, transparency, information security, and broader human rights concerns, these actors contribute significantly to the discourse. They have a demonstrated history of effectively responding whenever the state proposes new laws or measures that may conflict with human rights principles and democratic standards<sup>[259]</sup>. Their

[257] For example, Ireland opted for Media Commission for the DCS, while many countries gave this role to their electronic communications bodies, such as Belgium, France and Czech Republic.

[258] In Serbia, Consumer Protection Sector is currently within the Ministry of Internal and Foreign Trade.

[259] For example, joint action of CSOs twice led to the withdrawal of the Draft Law of Internal Affairs (September 2021 and December 2022), which had many problematic provisions and prescribed usage of nonselective real time biometric video surveillance. Working group created by the Ministry of Interior is still working on the Draft, with its content and timeline currently unknown to the public.

involvement serves to safeguard citizens' interests and ensures that a humane approach remains paramount in legislative initiatives.

Several notable activities concerning the DSA have taken place in Serbia. During October and November 2023, Faculty of Political Science, University of Belgrade and Serbian AI Institute organized AI masterclass<sup>[260]</sup>, where one of the sessions was dedicated to DSA and its influence on Western Balkan. In December 2023, Partners Serbia hosted a roundtable discussion involving Serbian civil society organizations (CSOs) and media entities, aiming to establish a common position and advocacy points regarding the potential implementation of legislation like the DSA in Serbia - and this research is part of these efforts. Subsequently, in January 2024, Partners Serbia convened another roundtable discussion, this time involving European non-state actors, to announce the formation of the WB6 network and initiate collaborative efforts on research and analysis in this area. Additionally, Serbian CSOs and representatives of international organizations have been actively participating in various international conferences focusing on the DSA and DMA, including the Civil Society Forum organized within the framework of the Berlin Process.

## Institutional readiness and the independence of competent institutions

The formation of a new Government is expected. Newly formed ministries may have a completely different arrangement of jurisdiction compared to the existing ones<sup>[261]</sup>. Therefore, we cannot assess the readiness and capacities of ministries until a new Government is formed. This part will focus on the two regulators which will likely assume the role of DSC, or a part of the Digital Coordinator Body.

REM participates as an observer in the European Regulators Group for Audiovisual Media Services (ERGA), which provides advisory assistance to the European Commission on laws concerning audiovisual media content. Through its involvement in ERGA, REM has been kept informed of the process of adopting the Digital Services Act since its inception.

While Serbia has not yet officially embarked on projects directly related to the DSA, REM addresses this issue primarily through collaboration with the Council of Europe and the ongoing project PROFREX.

[260] Istraživačko-razvojni institut za veštačku inteligenciju, "Regulisanje veštačke inteligencije: Pravni i etički izazovi," Istraživačko-razvojni institut za veštačku inteligenciju, October 2023, <https://ai-master-class.com/>.

[261] For example, currently, the Ministry of Information and Telecommunications and the Ministry of Internal and External Trade are crucial for this issue, whereas in the previous government, the Ministry of Culture and Information and the Ministry of Trade and Telecommunications had jurisdiction over these areas.

Under this project, Deirdre Kevin has authored a study on the Legal Framework of the Regulatory Body of Serbia and its alignment with European standards<sup>[262]</sup>, focusing predominantly on DSA provisions – the CoE commissioned a similar study in BiH (for more information see: Country overview: BiH). Additionally, within the same project, REM staff convened a meeting with colleagues from the Communications Regulatory Agency (RAK) of Bosnia and Herzegovina to deliberate on DSA provisions and potential new roles for regulators in the region<sup>[263]</sup>.

**REM is currently trying to establish formal channels of communication with relevant Ministries to ensure comprehensive information sharing and active involvement in the legislative process.** Among the foremost challenges identified by REM in an interview conducted under this research, is the financial aspect, which has constrained its capacity-building efforts for the existing staff. Additionally, this financial constraint mitigates REM’s ability to recruit new personnel possessing the technical expertise required to thoroughly comprehend the DSA and its implications.

RATEL has been informed of the DSA adoption process primarily through formal communication channels with EU institutions. This includes active participation in the Body of European Regulators for Electronic Communications (BEREC) and the Independent Regulators Group (IRG). The main part of RATEL’s capacity-building efforts concerning DSA topics has been facilitated through its engagement with the IRG, specifically workshops such as “Entering into the DSA Era: When regulatory collaboration is key,” “What is the scope of the DSA,” “Dynamics of cooperation with other regulators and cross-sectoral cooperation,” “DSCs - monitoring and implementation of DSA obligations,” and “DSA and potential obstacles,” alongside practical case studies.

However, to date, RATEL has not established formal communication with relevant ministries or other state institutions regarding the DSA, nor has it been adequately informed about existing legislative activities related to this matter.

[262] Deirdre Kevin, “Regulacija Medija: Studija Pravnog Okvira Regulatornog Tela Srbije i Usaglašavanje Sa Evropskim Standardima” (European Union, Council of Europe, 2023), [https://www.rem.rs/uploads/files/Baners/Studija%20pravnog%20okvira%20regulatornog%20tela%20srbije\(1\).pdf](https://www.rem.rs/uploads/files/Baners/Studija%20pravnog%20okvira%20regulatornog%20tela%20srbije(1).pdf).

[263] REM Staff, “Размена Знанања Запослених о Акту о Дигиталним Услугама,” REM: Regulatory Body for Digital Media, March 29, 2024, <https://rem.rs/sr/arhiva/vesti/2024/03/razmena-znanja-zaposlenih-o-aktu-o-digitalnim-uslugama#gsc.tab=0>.

## Concerns related to the implementation of DSA-related regulation in Serbia

The past practice of harmonizing laws in Serbia with European Union regulations provides us with reasons for concern. One example of poor practice is the Personal Data Protection Law from 2018, which largely mirrors the GDPR, suggesting that, formally, Serbia has aligned with the EU legislation. Given that provisions on personal data protection are present in numerous laws adopted before the PDP Law, upon its adoption, Serbia committed to harmonize all sectoral regulations with this Law by the end of 2020. However, this has not been accomplished to date, significantly complicating the implementation of these provisions and creating legal uncertainty. Additionally, the punitive policy outlined in our Law is noticeably milder compared to the GDPR. It is essential to approach the implementation of the Digital Services Act in a more thorough and efficient manner.

The partial implementation of regulations is not the only factor undermining the effective enforcement of legal mechanisms. It is a common scenario where Serbia has a good quality law but they remain merely useless due to poor coordination and communication among relevant institutions, lack of human resources, expertise, or political will. These are all common concerns which also apply to the DSA.

As potential a DSC, the cause for concern lies in the longstanding documented issues in the functioning of REM, even in areas considerably simpler than those envisaged by the DSA. The 2023 European Commission Report on Serbia also highlights that REM “fails to demonstrate its independence in a consistent manner and to exercise its mandate to the full in safeguarding media pluralism and professional standards” in the process of awarding TV licenses. Furthermore, the report stresses the urgency of gaining both REM’s and RATEL’s full independence, and “urgently encouraging the regulators to work proactively and fully carry out their mandates”.

After parliamentary and local elections held in December 2023 in Serbia, ODIHR published Election Observation Mission Final Report<sup>[264]</sup>, which refers to the REM several times, repeatedly noting that REM failed to act in line with its legal obligations, stating that: “REM maintained a notably passive approach to regulating media conduct during the campaign”; “while receiving 22 complaints, the REM did not issue any public responses prior to election day, arguing that complaints cannot be addressed in an expedited manner, which continued to significantly undermine its effectiveness.” As a result of the continued inactivity of REM, which has also been documented in previous reports, ODIHR added priority recommendation number 7: “The independence of the Electronic Media Regulatory Authority (REM) should be

[264] ODIHR Staff and OSCE Staff, “ODIHR Election Observation Mission Final Report: Republic of Serbia, Early Parliamentary Elections 17 December 2023” (Warsaw: OSCE, ODIHR, February 28, 2024), [https://www.osce.org/files/f/documents/1/3/563505\\_0.pdf](https://www.osce.org/files/f/documents/1/3/563505_0.pdf).

effectively guaranteed, in line with the new legal provisions. The REM should proactively use its legal powers to act ex officio on violations of media regulation, based on its systematic monitoring”. Additionally, in 2022, Media Freedom Rapid Response found that REM’s awarding of TV licenses underscores media pluralism and media diversity failure. They also stated that “the REM’s process of awarding TV licenses failed to meet the requirements set under its own guidelines on the minimum conditions for the provision of media services.”<sup>[265]</sup>

One of the biggest concerns is that the state may not demonstrate eagerness to effectively involve CSOs and academia in the legislative process surrounding the DSA. The challenge lies in how to effectively engage with state authorities to ensure meaningful collaboration and cooperation with non-state actors. Insufficient participation from these stakeholders could lead to a lack of diverse perspectives and expertise, ultimately undermining the effectiveness and legitimacy of the process. Moreover, another significant worry is the existing democratic infrastructure, which might not be robust enough to ensure the effective implementation of laws modeled after the DSA. This is particularly evident in the context of the failure to meet independence standards by the potential DSC, which, among other things, can lead to the appointment of GONGO organizations as trusted flaggers. This would not only create a false image that non-state actors are involved, but also manipulate public discourse and compromise the integrity of content regulation processes. Without a strong democratic framework and institutional mechanisms to safeguard transparency, accountability, and citizen participation, the full potential of DSA-inspired legislation may not be realized, leaving room for misuse and gaps in protecting digital rights.

## Recommendations to address concerns

Despite these concerns, Serbia is currently in a position to approach the implementation and enforcement of laws modeled after the DSA on time and through a collaborative process. This is particularly feasible because the implementation of these laws has already commenced in the EU member states, allowing Serbia to observe what has proven to be the best solution in practice, especially regarding the modalities of organizing the Digital Services Coordinator. It is essential for Serbia to seize this opportunity to chart its course effectively, rather than merely replicating laws from neighboring countries, which may not resonate well within its own context. Proactive and thoughtful engagement with various stakeholders is crucial for tailoring the regulatory framework to Serbia’s specific needs and ensuring its alignment with democratic principles and digital rights protection. Urgent initiation of these preparations is imperative to address these concerns effectively.

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[265] Media Freedom Rapid Response Staff, “Serbia: REM’s Awarding of TV Licences Underscores Media Pluralism and Media Diversity Failure - Media Freedom Rapid Response,” Media Freedom Rapid Response (blog), 2022, <https://www.mfrr.eu/serbia-rem-s-awarding-of-tv-licences-underscores-media-pluralism-and-media-diversity-failure/>.

It is imperative that the implementation process of laws modeled after the DSA are characterized by full transparency from its inception. This entails ensuring transparency in the creation of working groups, as well as in the decision-making processes throughout the implementation phase. Additionally, meaningful, and effective inclusion of CSOs and academia is essential, since they play crucial roles in providing valuable expertise, fostering public engagement, and ensuring accountability in the regulatory process.

It is equally important for CSOs to enhance their capacities and strategic positioning to effectively advocate for the protection of citizens' rights throughout the implementation. CSOs need to invest in building their expertise, knowledge, and organizational capacity to engage meaningfully in policy discussions, provide informed input, and advocate for the interests of citizens. Additionally, fostering collaboration and networking among CSOs can amplify their collective influence, enabling them to advocate more effectively for the protection of digital rights and meaningful implementation of DSA. By strengthening their capacities and forging strategic alliances, CSOs can emerge as a potent advocacy force, ensuring that the implementation of DSA-related legislation prioritizes the rights and interests of citizens. Moreover, CSOs play a crucial role in monitoring the implementation process, raising awareness among the public, and holding relevant stakeholders accountable, thereby contributing to the creation of a more transparent, accountable, and rights-respecting digital environment.

When forming the DSC body, decision-makers should consider institutions that have demonstrated effectiveness in protecting citizens' rights while remaining independent of external influences. This includes institutions with a track record of integrity, transparency, and accountability in their work, enabling them to act impartially and in the public interest. During an interview, **Tanja Maksic, the program coordinator at BIRN, contemplated this issue from the perspective of safeguarding public information standards and citizens' human rights: "When thinking about a single institution, I believe it should be RATEL. I think they are the most capacitated and enjoy the necessary reputation in both the general and expert public. If Serbia opts for a coordinating body, alongside RATEL, I see the participation of the Commissioner for Information of Public Importance and Personal Data Protection, as well as REM. It would be crucial for representatives of CSOs to be included in this body, but I fear that this type of institutional dialogue does not exist in our country."**

The idea of RATEL being the DSC, or being the main institution in the Coordinating Body, resonates with the fact that EU countries have mostly opted for their electronic communications bodies for this role.<sup>[266]</sup> For Serbia, one of the optimal approaches would involve establishing a coordinating body where RATEL serves as the primary institution, supported by other relevant entities covering their respective areas of jurisdiction. This would include REM, the Commissioner for Information of Public Importance and Personal Data Protection, the Commissioner for the Protection of Equality, the Ombudsman, consumer protection bodies, and other relevant stakeholders. Additionally, academia, civil society organizations, representatives from the private sector, and end-users should be included in this body to ensure diverse perspectives and expertise. The decision-making process within this body should be designed to provide each sector representative with equal power, trust, and integrity, which would demonstrate the advantages of a multi-stakeholder approach.

## Thinking Forward: Future Operational Models of Multi-Stakeholder Digital Service Coordinator Body

In light of the previous discussion, it is clear that decision makers should consider a multistakeholder approach for the Digital Services Coordinator Body due to its inherent advantages in promoting inclusivity, expertise, transparency, and legitimacy. By involving a diverse spectrum of stakeholders, including government agencies, industry representatives, civil society organizations, academia, end-users, and the privsector,ctor the DSC can:

- › Harness a wide range of perspectives, experiences, and expertise in the governance of digital services.
- › Ensures that regulatory decisions are informed by a comprehensive understanding of the complex challenges and opportunities in the digital sphere.
- › Inclusion of non-state actors would also be a logical solution for the fact that state institutions lack experts with diverse knowledge of both technical and human rights understanding.
- › By fostering collaboration and dialogue among stakeholders, the multi-stakeholder approach promotes transparency, accountability, and public trust in the regulatory process.

[266] Hogan Lovells, "EU Digital Services Act: List of Digital Services Coordinators -," Hogan Lovells Engage: Legal insight and analysis, 2024, <https://www.engage.hoganlovells.com/knowledgeservices/eu-digital-services-act-list-of-digital-services-coordinators>.

- › Facilitates adaptability and responsiveness to evolving digital challenges.

Therefore, it is important that the formation and operation of this body involve the non-state sector from the outset, in a genuine and effective manner, and that its representatives enjoy trust and an equal position compared to institutional representatives.

Although this approach seems to be the most advanced, the question is whether public institutions will be open to this type of cooperation with non-state actors. The representative of REM interviewed in the research process believes that the role of state bodies, independent institutions, and the civil sector is very clearly divided, and although CSOs should be involved in the process of implementation of the DSA, at least in the form of trusted flaggers, decision-making should remain exclusively in the domain of state actors. The RATEL representative interviewed sees the participation of civil society organizations in the work of the DSC only as trusted flaggers. As stated during the interview, a representative of the Ministry of Information and Telecommunications believes that CSO involvement in the Digital Coordinator Body would be beneficial, as the provisions of DSA are mostly pointed towards the consumer as the end-user. While formal communication with the EU bodies in this matter should be in the domain of state bodies, there is no reason why CSOs should not be involved, as the multi-stakeholder approach proved to be very fruitful in the Ministry's experience.

Involvement of non-state actors, especially academia and CSOs, would prevent misuse of this body's powers, lead to more efficient work, and also be more convenient for state institutions. They could rely on the existing expertise of these actors instead of investing time and financial resources in the thorough training of their personnel. However, the future alignment with DSA, the structure, roles, and responsibilities of relevant actors, as well as the effects of this framework, will significantly depend on the overall political climate in the country, which will, in turn, impact the non-state actors' strategies in the area.



# Part Three: Learnings from the European Union Countries' and global experiences

## DSA implementation in France

Michel Meillassoux

The Digital Services Act (DSA) negotiations started in December 2020. France's position during the negotiation was established by all interested ministries, jointly led by the Ministry of Economy, Finance and Industrial and Digital Sovereignty, and the Ministry of Culture. The final version of the DSA was agreed upon in April 2022 by the European Parliament, European Commission, and Council of the European Union, following so-called trilogue negotiations. Starting in January 2022, France held the Presidency of the Council, and, as such, represented the Council during the trilogue negotiations up until the end of the agreement. The DSA fully harmonizes EU legislation on rules applicable to intermediary services (mere conduit services, caching services, search engines, and hosting services, including online platforms) to ensure a safe, predictable, and trusted online environment in which fundamental rights enshrined in the Charter are effectively protected. Consequently, all Member State legislation that differs from the DSA in this scope is incompatible with EU law and can be declared inapplicable by EU courts.

**The implementation process of the DSA in France, therefore, focused mainly on identifying and amending laws regulating intermediary services.** Several laws requiring such services to combat illegal content, such as hate speech, or to take specific measures to limit the spread of disinformation were thus partially or totally repealed, with the aim of ensuring that the DSA would be directly applicable without any legal divergence or repetition in French law.

Multiple ministries were involved in the drafting of the implementation bill, with formal and informal discussions with relevant administrative authorities. Following the usual legislative procedure, the draft was then given to the Council of State for review, which led to several technical changes to ensure its cohesion with existing French law and its compliance with the Constitution. **The draft was also submitted to public consultation to gather observations and suggestions from the private sector and civil society organizations. The observations submitted mainly addressed parts of the draft bill unrelated to the DSA, such as provisions on online gambling, commercial practices of cloud service providers, and verification for pornographic services online.** The contributions did not point out major issues and did not lead to significant changes in the draft bill.

The French Government introduced the draft bill in the French Parliament in May 2023 **Projet de loi visant à sécuriser et réguler l'espace numérique** – Draft bill for a secure and regulated online space.<sup>[267]</sup> **The Senate and the National Assembly** agreed on a common version of the bill on March 27th, 2024, which will be declared final once formally adopted by both assemblies. The bill should be published and enter into force soon thereafter, unless it is brought to the Constitutional Council for examination, which would delay the adoption process and could bring about the repeal of unconstitutional provisions.

Meanwhile, the French authorities have engaged in talks with the European Commission to ensure the full compliance of the draft bill with the DSA and other EU legislation, following the procedure for technical regulations and rules on information society services set out by Directive 2015/1535. The Commission released a detailed opinion on the matter, laying out potential incompatibilities with EU rules, which guided the French Parliament in amending the draft bill.

As set out in the DSA, Member States must designate competent authorities to enforce the DSA in their respective jurisdictions, following the so-called “country of origin principle,” whereby services fall under the competence of the Member State in which they have their main establishment. Competent authorities act under the umbrella of the Digital Services Coordinator, which ensures the coherence of DSA enforcement in the given Member State. Each Digital Services Coordinator also takes part in **the European Board for Digital Services**, an independent advisory group on the supervision of the providers of intermediary services that assists the Commission in ensuring a consistent enforcement of the DSA in the EU and in analyzing emerging issues across the internal market relevant to the scope of the DSA.

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[267] Available here in French: <https://www.assemblee-nationale.fr/dyn/16/dossiers/alt/DLR5L16N47884>

**France designated three competent authorities to enforce the DSA: the Data Protection Authority** (Commission nationale de l'informatique et des libertés - CNIL), **the Consumer Protection Body** (Direction Générale de la Concurrence, Consommation et Répression des Fraudes - DGCCRF) and **the Audiovisual and Digital Regulatory Authority** (Autorité de Régulation de la Communication Audiovisuelle et Numérique – ARCOM), **with the latter designated as the Digital Services Coordinator**. ARCOM is charged with ensuring that all competent authorities thus designated cooperate and assist one another to ensure consistent and effective enforcement of the DSA.

Each of these authorities are delegated enforcement to specific parts of the DSA. CNIL is given competence on the enforcement of DSA rules related to data protection<sup>[268]</sup>, DGCCRF on the enforcement of rules on consumer protection<sup>[269]</sup>, and ARCOM on the enforcement of other DSA provisions. These authorities are given leave to exchange information to this end, without impediment stemming from trade secrets, confidentiality of investigation or personal data protection rules.

Each authority must notify the others of matters relating to their competence that they are informed of while enforcing these rules, and **all authorities must determine the means of their operational cooperation via mutual agreements. Finally, a national network for the coordination of digital services regulation was created**, and is comprised of these authorities as well as other bodies implicated in digital services regulation (such as the telecommunication regulatory authorities – ARCEP – the Competition Authority, the cybersecurity authority – ANSSI – and relevant Ministries).

Many Members of Parliament pointed out the need for designated authorities to be given sufficient resources to ensure effective enforcement of the DSA. The 2022 and 2023 budget bills included provisions that reinforced staffing for the designated authorities, with **ARCOM in particular gaining 25 new staffing positions for the DSA enforcement specifically**.

Although the draft bill has yet to be adopted, all three competent authorities have begun preparing for the enforcement. ARCOM has been taking part in Digital Services Coordinators meetings (foreshadowing the European Board for Digital Services) and has begun engaging with the private sector and civil society organizations to provide them with clear information on the obligations and rights created by the DSA. ARCOM has been especially active on the topics of trusted flaggers and researchers' access to data.

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[268] Article 26 § 1 d) and § 3, and article 28 § 2 of the DSA.

[269] Articles 25, 30, 31 and 32 of the DSA.

# DSA Implementation in Germany

Emily Wright

The first version of Germany's Digital Services Act (DSA), the Digitale-Dienste-Gesetzes (DDG), was introduced on 4 August 2023 by Germany's **Federal Ministry for Digital and Transport**.<sup>[270]</sup> The DDG has designated the Digital Services Coordinator (DSC) and other competent authorities. Although the bill has not yet passed, preparation for implementation has already begun. **Challenges specific to Germany include replacing existing laws, especially the NetzDG, and clarifying the role of the police.**<sup>[271]</sup> **Civil society organizations (CSOs) have been involved from the beginning of the process and will continue to be involved through an innovative advisory board.**<sup>[272]</sup> However, concerns remain about the clarity of the board's role and the potential for politicization due to the method of appointing board members.<sup>[273]</sup>

Germany's DSC will be the Bundesnetzagentur (Federal Network Agency)<sup>[274]</sup>. This agency regulates and fosters competition in the electricity, gas, telecommunications, post, and railway industries in Germany<sup>[275]</sup>. **The Federal Network Agency** itself is not an independent institution as laid out in the DSA. However, to address this, the DSC will exist as an independent department within the Agency. **The head of the DSC will not be under the Agency, but instead will have to report to the parliament and will be subjected to financial checks.** The department will not have a separate budget, but will instead have a budget line. This was so they could use the infrastructure from the Agency. However, the staff will be independent.<sup>[276]</sup>

[270] Marvin Bartels and Niklas Maamar, "German Digital Services Act Complements EU Digital Services Act – New Rules for Online Services," *Noerr* (blog), August 16, 2023.

[271] Tomas Rudl, "Digitale-Dienste-Gesetz: Bundeskriminalamt Erwartet Meldungen Im Minutentakt," *Netzpolitik.org, Bundeskriminalamt Erwartet Meldungen Im Minutentakt* (blog), January 26, 2024, <https://netzpolitik.org/2024/digitale-dienste-gesetz-bundeskriminalamt-erwartet-meldungen-im-minutentakt/>.

[272] Julian Jaursch, "Stellungnahme Zum Entwurf Eines Deutschen Digitale-Dienste-Gesetzes Vom 22. Dezember 2023" (Stiftung Neue Verantwortung, February 2024), [https://www.stiftung-nv.de/sites/default/files/snv\\_stellungnahme\\_ddg-rege.pdf](https://www.stiftung-nv.de/sites/default/files/snv_stellungnahme_ddg-rege.pdf).

[273] Julian Jaursch, Interview with Dr. Julian Jaursch on Digital Services Act, interview by Emily Wright, April 9, 2024.

[274] Marvin Bartels and Niklas Maamar, "German Digital Services Act Complements EU Digital Services Act – New Rules for Online Services," *Noerr* (blog), August 16, 2023.

[275] Federal Ministry for Economic Affairs and Climate Action, "Bundesnetzagentur (Federal Network Agency) (BNetzA)," accessed April 16, 2024, <https://www.bmwk.de/Redaktion/EN/Artikel/Ministry/bundesnetzagentur-bnetza.html>.

[276] Julian Jaursch, Interview with Dr. Julian Jaursch on Digital Services Act, interview by Emily Wright, April 9, 2024.

In the present state of the draft, as of March 22, 2024, the designated competent authorities for assisting in DSA implementation, will be **the Federal Criminal Police (BKA), Federal Commissioner for Data Protection and Freedom of Information (DPA), Federal Department for the Protection of Children and Young People in the Media**, and the **Federal State Media Authorities**.<sup>[277]</sup>

The Federal Agency for the Protection of Children and Young Persons in the Media will deal with violations that relate to minors' protections<sup>[278]</sup>. The DPA will focus on the DSA articles concerning advertisement profiling.<sup>[279]</sup> The BKA will be tasked with handling the notification of suspicions of criminal offense.<sup>[280]</sup> The Draft DDG also allows for the possibility of assigning other agencies with responsibilities and tasks in the future.<sup>[281]</sup>

The draft bill contains special considerations for the enforcement effort. This includes expectations for financial resources, the number of human resources, and other considerations needed to implement the law. **The draft includes a separate section regarding finances and estimates that there will need to be 72 new positions within the Federal Network Agency alone for proper implementation** of human resources, and other considerations needed to implement the law.<sup>[282]</sup>

Germany's biggest challenge in implementing the DSA was replacing the already existing NetzDG and the German Telemedia Act (GTA) legislation, which conflicted with the DSA. Specifically, the NetzDG and the GTA, although considered to be more strict than the DSA, were much narrower and only dealt with social media. This allowed for more specific rules and procedures that had to be more generalized in the DDG - Germany version of DSA. Additionally, the DDG impacts all online providers, including social media, and is considerably more vague in its provisions, causing apprehension around implementation.

There are also concerns from CSOs over the BKA's involvement. In the NetzDG, their role in enforcement was more detailed. Now, due to the ambiguity in the DSA regarding the notification of suspicions of criminal offenses<sup>[283]</sup>, the DDG is not able to specify the BKA's

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[277] *ibid.*

[278] DSA Articles 14(3) and 21(1)

[279] DSA Articles 16(3), 28(2), and (3)

[280] DSA Article 18(1)

[281] Marlen Mittelstein and Katharina Schwalke, "Digital Platform Regulation: Germany's Implementation Draft Bill of the Digital Services Act," Hogan Lovells (blog), October 4, 2023, <https://www.engage.hoganlovells.com/knowledgeservices/insights-and-analysis/digital-platform-regulation-germanys-implementation-draft-bill-of-the-digital-services-act>.

[282] *ibid.*

[283] DSA Article 18

role as clearly. The DDG designates the BKA<sup>[284]</sup> as a service for the intermediary providers and as a central reporting point for criminal activity.<sup>[285]</sup> The providers can send information to the BKA and they will distribute the collected information to the correct office. Data protection rules for the police are outlined in other relevant laws and specifically state that they must destroy any data not being used. Currently, it is still unclear if the police will be overwhelmed with data from providers or not and if the current procedures will be sufficient for proper implementation.

**Civil society organizations based in Germany have been active in DSA discourse since it was first introduced at the EU level. After it was passed and the implementation process began in Germany, they were involved at an official level, including the implementation consultation process, due to CSO involvement requirements of Number 47 of the Joint Rules of Procedures before any laws are sent to the parliament.**<sup>[286]</sup>

**This consultation process resulted in the inclusion of a civil society advisory board in Germany's Draft DDG. This board will be made of representatives from civil society, business associations, and science associations. Companies are not allowed to be part of the advisory board but will be represented collectively through association representatives.**<sup>[287]</sup>

This creation is unique to Germany and came from CSOs looking to be more active in DDG implementation. However, CSOs have highlighted various areas warranting concern. First, the duties of the board are not clear. In the current version of the draft, there is no obligation for the DSC to engage with the experts or consider the advisory board's opinions or recommendations. In response to this complaint, the Federal Ministry for Digital and Transport and others involved in the drafting process note the DDG<sup>[288]</sup> requirements of DSC independence.

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[284] DDG Article 18

[285] Tomas Rudl, "Digitale-Dienste-Gesetz: Bundeskriminalamt Erwartet Meldungen Im Minutentakt," Netzpolitik.org, *Bundeskriminalamt Erwartet Meldungen Im Minutentakt* (blog), January 26, 2024, <https://netzpolitik.org/2024/digitale-dienste-gesetz-bundeskriminalamt-erwartet-meldungen-im-minutentakt/>.

[286] Federal Ministry of the Interior and Community, "Joint Rules of Procedure of the Federal Ministries (GGO)" (Federal Ministry of the Interior and Community, July 30, 2020), [https://www.bmi.bund.de/SharedDocs/downloads/EN/themen/moderne-verwaltung/ggo\\_en.html](https://www.bmi.bund.de/SharedDocs/downloads/EN/themen/moderne-verwaltung/ggo_en.html).

[287] Julian Jaursch, "Stellungnahme Zum Entwurf Eines Deutschen Digitale-Dienste-Gesetzes Vom 22. Dezember 2023" (Stiftung Neue Verantwortung, February 2024), [https://www.stiftung-nv.de/sites/default/files/snv\\_stellungnahme\\_ddg-rege.pdf](https://www.stiftung-nv.de/sites/default/files/snv_stellungnahme_ddg-rege.pdf).

[288] DDG Article 15

Second, the Bundestag will recommend the members of the board and the government will have the final say.<sup>[289]</sup> **Consequently, there is concern that there is potential for politically motivated appointments.**<sup>[290]</sup> This would allow for recommendations by the board to be subjected to party recommendations rather than the expert opinions as intended. Additionally, there are apprehensions regarding the functioning of the board, as there have been cases in Germany where advisory bodies have been implemented but their roles are sidelined.<sup>[291]</sup>

Although there are concerns regarding the functions of the board, the inclusion of the board itself in the DDG can provide a strong starting point and outlines a promising precedent for other countries to involve their CSOs in national implementation efforts and can provide an extra layer of expertise to properly enact the DSA.

Note: Current Situation (April 2024)

The current version of the draft is in plenary procedure and is likely to be passed by the end of April 2024<sup>[292]</sup>. As of the publication of this report, the Bundesnetzagentur is preparing for implementation<sup>[293]</sup>.

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[289] Julian Jaurisch, Interview with Dr. Julian Jaurisch on Digital Services Act, interview by Emily Wright, April 9, 2024.

[290] Mittelstein and Schwalke, "Digital Platform Regulation."

[291] Julian Jaurisch, Interview with Dr. Julian Jaurisch on Digital Services Act, interview by Emily Wright, April 9, 2024.

[292] "Gesetz Zur Durchführung Der Verordnung (EU) 2022/2065 Des Europäischen Parlaments Und Des Rates Vom 19. Oktober 2022 Über Einen Binnenmarkt Für Digitale Dienste Und Zur Änderung Der Richtlinie 2000/31/EG Sowie Zur Durchführung Der Verordnung (EU) 2019/1150 Des Europäischen Parlaments Und Des Rates Vom 20. Juni 2019 Zur Förderung von Fairness Und Transparenz Für Gewerbliche Nutzer von Online-Vermittlungsdiensten Und Zur Änderung Weiterer Gesetze," Deutscher Bundestag: Dokumentations- und Informationssystem für Parlamentsmaterialien, March 22, 2024, <https://dip.bundestag.de/vorgang/gesetz-zur-durchf%C3%BChrung-der-verordnung-eu-2022-2065-des-europ%C3%A4ischen-parlaments/307296>.

[293] Bundesnetzagentur Staff, "Digital Services Coordinator," Bundesnetzagentur, 2024, <https://www.bundesnetzagentur.de/EN/Areas/Digitalisation/DSA/start.html>.

# Overview of the implementation of DSA in Romania<sup>[294]</sup>

Bogdan Manolea

## DSC and the new law implementing DSA

DSA was implemented in Romania by the law, „**Law on the establishment of measures for the implementation 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, as well for the amendment and supplementation of Law No. 365/2002 on electronic commerce.**“

**The National Authority for Administration and Regulation in Communications (“ANCOM”) was designated as the DSC** through a Memorandum adopted by the Government in February 2024. There was no public debate or public assessment on why this was chosen.

On 20 October 2023, the ANCOM and the Ministry of Research, Innovation and Digitisation published the legislation for public consultation until 31 October 2023, with a public debate taking place in November 2023.

**Despite comments from civil society NGO ApTI and other NGOs and parties<sup>[295]</sup>, none of the comments was included in the draft law.** At the end of December, the law was adopted by the Government and then sent to the Parliament. The latter rushed the law when it started its session in February 2024<sup>[296]</sup>. Essentially, the law passed through both Chambers and all Committees in just over 30 days. Naturally, there was no debate on any issues. The final text was promulgated by the President and was published in Official Monitor on 19 March 2024 becoming law 50/2024.<sup>[297]</sup>

[294] This case study was drafted in April 2024.

[295] ApTI, Asociația pentru Tehnologie și Internet, available at: <https://apti.ro/> [Last accessed June 18 2024]

[296] E-Senat, available at: <https://www.senat.ro/Legis/Lista.aspx?cod=26003> [Last accessed June 18 2024]

[297] E-Senat, List of Legislation: <https://www.senat.ro/Legis/Lista.aspx?cod=26003> [Last accessed June 18 2024]



In our opinion, the law goes beyond the mere implementation of DSA and has several drawbacks, especially:

### 1. Competent authorities and their role

In Article 7 of ANCOM's law, and then throughout the law, mentions the terms 'responsible authorities', 'relevant' and 'having powers'. The present form of the draft takes over the wording from the DSA Regulation, but does not name these authorities or clarify their respective areas of expertise. In its capacity as coordinator of digital services, ANCOM should clearly set out the form of its cooperation and partner authorities in the implementation of the DSA Regulation, in the same way as similar bills in France<sup>[298]</sup> or Italy.

### 2. No experts involvement in DSA implementation

We also noted the complete lack of civil society and academia as partners or experts in the implementation of the DSA Regulation. The text of the European legislative act explicitly mentions that civil society organizations have an important role to play in the implementation of the DSA Regulation as noted in the the joint position of March 2023 signed by ApTI and other NGOs on the implementation of the DSA<sup>[299]</sup>.

We recommended ANCOM not only to include these entities explicitly in the draft legislation, but also to make efforts to include notices about the roles they can perform in the implementation of the DSA and to ensure continuous communication between the competent authorities and civil society, including by extension of the Advisory Council.

### 3. The obligation of prior notification to ANCOM is a de facto mandatory registration process

The direct obligation to notify all Romanian online intermediaries to ANCOM before or shortly starting their activity is a prior authorisation process, especially by having a direct fine.

Also, it seems ANCOM is not aware of the diversity of online intermediaries, especially the types of hosting providers, including hosting other people's content only as an accessory service. This may lead to online newspapers that have a comments section to have the obligation to register to ANCOM, which is a breach of freedom of expression.

As far as we know, no other country has proposed this, and an existing obligation only for providers domiciled in Romania would violate the European Union's free market principle and go against the essence of the regulation being a single market.

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[298] See: DSA Implementation in France in this research

[299] Poziție comună cu privire la implementarea Digital Services Act (DSA) la nivel național, APta and civil society organisations, Joint position; available at: [https://apti.ro/sites/default/files/Poziție\\_comună\\_cu\\_privire\\_la\\_implementarea\\_Digital\\_Services\\_Act\\_.pdf](https://apti.ro/sites/default/files/Poziție_comună_cu_privire_la_implementarea_Digital_Services_Act_.pdf) [Last accessed June 18 2024]

#### 4. No details on human resources and financial independence

The law or its accompanying documents have few references describing how to implement the articles of the DSA regulation related to the independence of the Digital Service Coordinator, including from a financial and human resources point of view under Art. 50 DSA.

### Secondary legislation in DSA implementation

Even before the law was published, ANCOM has launched 4 draft <sup>[300]</sup> call for the public debate for secondary legislation:

- › on Complaints Procedure;
- › on Certification of out of Court Dispute Settlements
- › on Granting the Trusted Flagger status
- › on system for „informing“ ANCOM that a Romanian company is subject to DSA.

All draft decisions are not adopted yet, ApTI, with 10 other NGOs<sup>[301]</sup>, sent another round of comments showing that the decisions have major problems in respecting freedom of expression as they:

- › Create categories of **“illegal content”** that are not explicitly regulated as illegal in current Romanian law;
- › Introduce **highly bureaucratic compulsory registration measures** for any category of intermediary service providers, ignoring specific situations.
- › Create a mechanism in which **the verifier of a “trusted flagger”** actually has no jurisdiction over the substance of the scope of the verification;
- › **Disregard the complex case law** of the ECtHR in this area - in particular the cases of Delfi AS v. Estonia [Grand Chamber], 2015, MTE and Index.hu v. Hungary, 2016 and Pihl v. Sweden, 2017;

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[300] ANCOM, Consultations: [https://www.ancom.ro/consultari-incheiate\\_269](https://www.ancom.ro/consultari-incheiate_269) [Last accessed June 18 2024]

[301] Apti, Ce face ANCOM-ul cu DSA-ul: Poliția Internetului sau un mediu online sigur și fiabil, prin respectarea drepturilor fundamentale?, 3 April 2024, [Last accessed June 18 2024]

- › In addition, disregard CJEU decisions- for example cases C-649/17 Verbraucherzentrale Bundesverband eV v Amazon, C-484/14 Tobias Mc Fadden v. Sony Music and C-390/18 X v. Airbnb Ireland UC, or other decisions on Articles 12-14 of the E-Commerce Directive.

The comments also made concrete suggestions on how ANCOM should implement DSA as complex legislation with significant impact on fundamental rights:

- › Focus on the major issues that fall within the scope of the DSA - 95% of the issues are related to the reporting of illegal content on large platforms (VLOPs) and their lack of adequate response.
- › Prepare and present an analysis of how these decisions affect fundamental rights, based on the criteria proposed by the Romanian Government and using the expertise of public institutions (e.g. Ombudsman or IRDO) or NGOs.
- › Identify the key actors and how to consult them, including by organizing a multistakeholder structure (business, academia, civil society), before proposing measures with unclear effects, in order to identify whether the decisions taken are in the right direction.

Specifically, with regard to the two pieces of legislation put up for public debate, we consider that they should *exclude* small actors - e.g. micro-enterprises, small businesses (as defined by the DSA), as well as any non-commercial actors but in fact include only intermediary service providers as the *main activity*, to exclude the situation where “the activity in question is a minor and/or purely ancillary feature of another service or a minor function of the main service” (taken from the definition in Art. 3(i) of the ASD). In addition, it was noted that the information be limited to what is required by the DSA Regulation (communication of the contact point - which can also be a simple form) and exclude any additional aspects (e.g. e-mail or telephone contacts). The obligations in the Decision should not extend the obligations in the DSA Regulation or Law 50/2024 (e.g. publication of contact details), especially as they could be used for other purposes (e.g. spam harvesting).

In particular, the decision on trusted flaggers should drop a requirement in regard to the list of competence areas and instead possibly require the organization making the application to identify exactly what illegal content it is reporting and the specific legal basis in each case. ANCOM should start an effort to identify, together with other stakeholders, how to implement the checks required by the DSA, including the possibility of outsourcing them, and only then update this decision.

# The Benefits of Multistakeholderism: The Global Network Initiative's Approach to Protecting Digital Rights

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Emily Wright

## Introduction

Implementing the Digital Services Act (DSA) in the Western Balkans demands a comprehensive and inclusive multi stakeholder strategy. As presented in the country reports, the region faces substantial challenges, including the risk of insufficient independence among potential DSCs, risks of government interference, and the prevalence of disinformation and illicit content across online platforms.<sup>[302]</sup> Due to these heightened concerns, the approach to implementing the DSA in this region should extend beyond the present limited interaction between civil society and the government. Within the realm of digital rights advocacy, the Global Network Initiative (GNI) stands out as an example of how a multistakeholder approach that fosters collaboration between civil society, academia, investors, and the private sector can pave the way for DSA implementation and the safeguarding of digital freedoms.

GNI was born after the Snowden revelation and other ground-breaking cases of government access to users' data held by private companies that at that point in time seemed like a dysregulated field, leaving citizens' data unprotected from both companies and governments – a situation that resembles a challenging digital regulatory landscape of the Western Balkans.

For this reason, we will take a close look into their work, methodology, challenges, and achievements to learn from their experience with multi-stakeholder engagement that is incremental to well-functioning DSCs in the Western Balkans.

GNI works with companies to protect citizens' digital rights, focusing on government requests, such as those related to access to data held by companies. GNI focuses on a series of government requests and demands that look different across different types of companies in the tech ecosystem. To do this, they developed an assessment process for the entire technology ecosystem that provides a series of steps, through its implementation guidelines, that companies can use to push back against government demands for user data or content takedown requests that harm freedom of expression and privacy. At the same time, they partner with multilateral institutions, including UN agencies, rights-respecting governments,

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[302] Mila Bajić et al., "Freedom on the Net 2023: Serbia" (Freedom House, 2024), <https://freedomhouse.org/country/serbia/freedom-net/2023>.

and stakeholders from academia, civil society, companies, and investors, to influence the conduct of tech companies and the efforts by governments to regulate them. They work at the intersection of freedom of expression, privacy, and corporate responsibility.<sup>[303]</sup> In 2022, much of their work focused on government activities that caused disruptions to digital services and internet access.<sup>[304]</sup>

One of their main priorities is to partner with a variety of stakeholders to protect citizens from governments wanting to directly access user data, misuse the company's Terms of Service, or censor through targeting demands to companies working in digital equipment or infrastructure.<sup>[305]</sup>

In this way, in the context of Digital Service Coordinators, GNI, through this unique multi stakeholder approach, has created a tech-accountability framework, an essential building block of DSA and related DSC engagement. The assessment process is conducted against the GNI principles and implementation guidelines, ensuring that the companies remain within the boundaries of national laws and international human rights standards. The GNI principles and implementation guidelines constitute a framework that helps address this, particularly when companies have to comply with laws that can be harmful to freedom of expression and privacy.

## Methods of Engagement

GNI's membership has four constituencies, including companies, investors, civil society organizations, and academics. Members come from regions throughout the world, with 36% coming from countries in the Global North, encompassing the EU, US, Canada, and Australia. To engage with its members, GNI implements a variety of methods to promote an inclusive environment that emphasizes its goal of membership-driven work<sup>[306]</sup>. Importantly, every GNI member can propose an issue to be included in diverse working committees that operate under GNI.

The Learning Spaces is a unique and useful method used by GNI. It establishes a secure environment, with all participants bound by Non-Disclosure Agreements, enabling companies to address challenges and foster discussions for effective solutions. Operating under the framework of Chatham House Rules, the Learning Spaces ensure confidentiality, granting

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[303] GNI Staff, "Our Approach," Global Network Initiative, accessed April 1, 2024, <https://globalnetworkinitiative.org/about/approach/>.

[304] Global Network Initiative, "GNI Annual Report 2022: Navigating a Shifting Digital Landscape" (Global Network Initiative, 2021), [https://globalnetworkinitiative.org/wp-content/uploads/2023/09/GNI\\_AR22\\_web-1.pdf](https://globalnetworkinitiative.org/wp-content/uploads/2023/09/GNI_AR22_web-1.pdf).

[305] GNI Staff, "Our Approach," Global Network Initiative, accessed April 1, 2024, <https://globalnetworkinitiative.org/about/approach/>.

[306] GNI Staff, "Members," Global Network Initiative, accessed April 30, 2024, <https://globalnetworkinitiative.org/who-we-are/members/>.

participants the confidence to share sensitive information. Although CSOs can use insights for advocacy, public disclosure is prohibited. This assurance of confidentiality cultivates a culture of openness and encourages companies to openly discuss their challenges and collaborate towards solutions, rather than feeling the need to conceal them.<sup>[307]</sup> It is a space built on trust and good-faith efforts cultivated in the last 15 years, according to our respondent, Montserrat Legorreta, Operations and Program Associate at GNI. She also explains that certain issues can be resolved by groups of stakeholders involving just a few actors. Discretion, confidentiality, and long-term efforts require group effort and perseverance. This discretion highlights why assessment reports undertaken by companies are not published in full due to the sensitivity of the data and the potential impacts of disclosing this data to governments. The potential for this kind of space to be designed regarding the DSC in this region is a separate question, but one that is most certainly worth exploring in systems fraught with mistrust and bad-faith actors.

GNI uses several committees to emphasize the membership-driven aspects of GNI. Within the learning committee, members determine a variety of agendas and function as a space for different stakeholders to engage with others on their respective issues. Similarly, the policy committee encourages members to share issues pertinent to them, such as draft laws or consultations on internet governance, and exchange information on live issues. As a result of these committees, statements are published that highlight members' concerns on a consensus basis.<sup>[308]</sup> When understanding this in the context of the DSCs in the Western Balkans, the different committees can act as a key learning point to offer a space of equity, participation, and joint-decision making.

However, Montserrat Legorreta notices that multistakeholder fatigue and power asymmetry can be occasional problems between members and require time and effort to be ameliorated. The independence of the members and each constituency, strong governance structures, and reliance on assessment guidelines for the companies are some of the key instruments GNI uses to achieve multistakeholderism.

## Stakeholder Engagement Examples

GNI has several examples of working with alternative stakeholders in protecting digital rights, including companies and within their CSO network.

One especially pertinent example of a multistakeholder initiative is the Country Legal Frameworks Resource (CLFR), created by Vodafone with GNI. In 2014, Vodafone published the first Law Enforcement Disclosure Report. This report gave an insight into the legal frameworks, governance principles, and operating procedures relevant to assistance

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[307] Montserrat Legorreta, Interview on Global Network Initiative, April 23, 2023.

[308] Montserrat Legorreta, Interview on Global Network Initiative, April 23, 2023.

demands from law enforcement and intelligence agencies Vodafone operated in.<sup>[309]</sup> Based on this methodology, the Telecommunications Industry Dialogue (TID), a coalition of telecommunications operators and vendor companies addressing privacy and freedom of expression concerns, commissioned further work and published a report on countries with legal frameworks with a focus on freedom of expression and privacy. Their body of work was absorbed by GNI after TID joined. In 2019, GNI published a new version of the CLFR, which is consistently updated<sup>[310]</sup>. The CLFR is a resource for companies to analyze governments' legal authorities to intercept communications, obtain access to communications data, or restrict the content in over 50 countries.<sup>[311]</sup> Using this resource, and several others published by GNI like it, companies can look at laws organized by country and understand their obligations under the law. This tool is especially useful to show how specific laws can impact freedom of expression and privacy regulations that tech companies have to abide by.

An example of GNI collaboration with a civil society organization is the Emerging Voices Fellowship Cohort, part of SuNI. Through the project, a Paraguayan-based NGO, TEDIC, was supported through a research grant to study potential internet shutdowns in the Northern Zone of Paraguay.<sup>[312]</sup> By partnering with NGOs, GNI was able to support local research that provided awareness about the issue, promoted open communications with companies operating in Paraguay, and presented Paraguay's legal framework.<sup>[313]</sup> This project brought in Global Majority CSOs into GNI and gave them an opening into understanding and participating in the assessment process. This allowed for them to become full members and share the role companies play in protecting human rights.

GNI also partners with academics. As part of GNI's Sustaining Multi-Stakeholder Networks for Internet Freedom Project (SuNI), they worked with the Center for Communication Governance at the National Law University Delhi. This collaboration resulted in an academic research report on India's surveillance law landscape and the impact of relevant court cases. The report included an analysis of the constitutional and legal framework for surveillance in India, including the existing accountability mechanisms and recommendations for

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[309] Vodafone Group Media Relations, "Vodafone Publishes First Global Law Enforcement Disclosure Report Spanning 29 Countries," Vodafone.com, June 6, 2014, [https://www.vodafone.com/news/corporate-and-financial/law\\_enforcement\\_disclosure\\_report](https://www.vodafone.com/news/corporate-and-financial/law_enforcement_disclosure_report).

[310] GNI Staff, "Legal Frameworks on Freedom of Expression and Privacy in Telecommunications," *Global Network Initiative: Country Legal Frameworks Resource* (blog), n.d., <https://globalnetworkinitiative.org/resources/clfr/>.

[311] Vodafone and GNI Staff, "Country Legal Frameworks Resource," Global Network Initiative, 2024, <https://clfr.globalnetworkinitiative.org/>.

[312] GNI Staff, "Report: Internet Shutdowns in the Northern Zone of Paraguay," Global Network Initiative, July 20, 2023, <https://globalnetworkinitiative.org/report-internet-shutdowns-in-the-northern-zone-of-paraguay/>.

[313] TEDIC, "Internet Shutdowns in Paraguay? An Exploratory Study in the Northern Zone," TEDIC (blog), July 18, 2023, <https://www.tedic.org/en/internet-shutdowns-in-paraguay/>.

improvement<sup>[314]</sup>. Partnering with academia allows GNI to cooperate with an additional group of stakeholders that view digital rights protections through a different lens than the government, CSOs, and the private sector.

By partnering with businesses, CSOs, and academics, GNI can engage with the entirety of the technology ecosystem to better protect fundamental rights. These initiatives highlight the multitude of ways engagement can take place and the added value of increasing the variety of actors engaging on policy issues. The DSCs in the Western Balkans have the opportunity to adopt a similar model and utilize the variety of expertise to implement the DSA responsibly and efficiently.

## Conclusion

The implementation of the Digital Services Act (DSA) in the Western Balkans demands a nuanced and inclusive approach. The multistakeholder model, exemplified by GNI, can help avoid the potential issues if the DSC is not functionally independent by mitigating government interference and underscoring the necessity of collaborative efforts by transcending the traditional boundaries between CSOs, academia, and the private sector. The GNI model can assist in understanding the most complex question about functional multi stakeholder bodies and operations: how to ensure a proper power balance and meaningful inclusion of all the voices? In the context of DSA harmonization in the Western Balkans and learning from this global model, the multistakeholder approach requires all the actors to analyze their priorities and action points in the short and long term. This engagement has the potential to promote informed decision-making, provide space for stakeholders to advocate for digital rights protections, and implement transparency mechanisms. By fostering relationships between the sectors, there is a much greater potential that the DSC will be able to navigate digital regulation while safeguarding the interests and freedom of individuals in the digital age.

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[314] GNI Staff, "Research: The Surveillance Law Landscape in India & the Impact of Puttaswamy," Global Network Initiative, July 20, 2023, <https://globalnetworkinitiative.org/research-the-surveillance-law-landscape-in-india-the-impact-of-puttaswamy/>.



# Authors' Bios

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## Bojana Kostic

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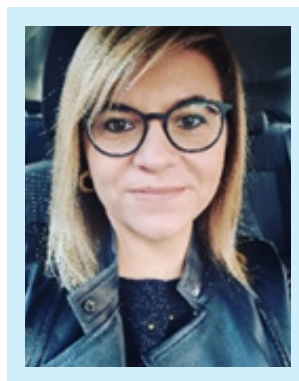
Bojana Kostić is a researcher and advocate in the field of human rights and technology. She writes about freedom of expression within the context of socio-technological repressive dynamics, focusing on principles and values of human rights protection, particularly the protection of minority and marginalized groups, gender equality issues, and intersectional justice. She works for international organizations such as the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe, and the United Nations Educational, Scientific and Cultural Organization (UNESCO), as well as for media freedom organizations like Free Press Unlimited, Thomson Foundation, Troll-Busters, Media Diversity Institute, SHARE Foundation, and the Balkan Investigative Reporting Network. She regularly provides support to journalists and human rights defenders in better recognizing and combating threats and surveillance online. She aims to leverage community knowledge and existing resilience support mechanisms to drive change, especially in the areas of media, community building, and designing inclusive media policies.



## Danche Danilovska Bajdenovska

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Danche Danilovska Bajdenovska is program specialist with broad experience in developing program strategies and planning and implementing project activities, possessing strong leadership, organizational, and communication skills. A highly motivated and resourceful team player dedicated to building the capacity of civil society organizations in the country across various areas related to anti-corruption, transparency, accountability, civic monitoring and oversight, and civic education. Experienced in advocacy work around the approximation of the Macedonian legislation with the EU acquis.



Actively contributed as a member of various working groups involved in drafting key policies such as the Law on Prevention of Corruption and Conflict of Interest, Law on Free Access

to Public Information, Government Transparency Strategies (2019-2021) and (2023-2026), Cross-sectoral working group for development of system for state funding of the civil society organizations, as well as the Law on Associations and Foundations. A member of working groups dedicated to shaping the National Action Plan for Open Government Partnership.

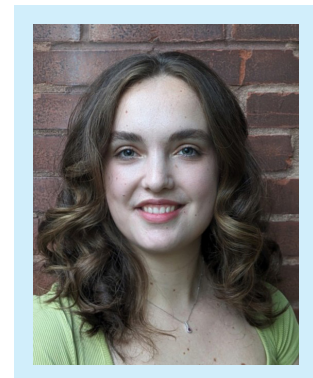
Goal oriented, trustworthy, flexible, creative and ambitious with problem-solving attitude. Provided valuable support to state administrations, particularly in the field of education, focusing on promoting transparency and ensuring accountability. Additionally, my expertise includes proficiently managing budgets of up to 1 million euros, encompassing planning, preparation, and comprehensive reporting. Furthermore, I have authored public policy documents, delivering insightful analyses and offering recommendations to enhance legislation. I have 20 years of experience and hold a master's degree (LLM, Master of Laws) at the University "Ss. Cyril and Methodius" in Skopje.

Currently, Danche serves as the Program Director at the Metamorphosis Foundation for Internet and Society. As the Program Director, she leads the Foundation's programs and ensures the quality and impact of all program investments. The Program Director plays a crucial role in designing and proposing program strategy, in coordination and collaboration with key program staff. Additionally, the Director actively participates in weekly planning sessions with the CEO and other members of the senior management team. Aligned with the Foundation's commitment to becoming a learning organization, the Director plays a key role in promoting skills development within her staff teams and acquiring new skills for herself.

## Emily Wright

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Emily Wright is a researcher and former Fulbright Research Fellow affiliated with Partners for Democratic Change Serbia since 2022. Her research has focused on human rights and digital rights issues, most recently regarding DSA implementation in Serbia and its potential impact on civil society and investigative journalists. She completed her B.A. in International Studies at the University of Wyoming and her M.A. in International Affairs at the New School.



## Maida Culahovic

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Maida Culahovic holds an M.A. in European Studies from the University of Sarajevo in association with the University of Bologna and London School of Economics.

Maida works at Citizens Association “Zašto ne/Why Not” from Bosnia and Herzegovina, where she coordinates policy and advocacy efforts aimed at improving the digital space with a particular focus on harmonization with the relevant European policies and regulations. Previously, she had worked at the Communications Regulatory Agency of Bosnia and Herzegovina for many years, focusing on the development of regulatory framework for the audiovisual media sector and its harmonization with European standards and best practices, as well as coordinating international cooperation with other regulatory authorities and networks.

Maida is an expert in media and digital policy. In recent years, she has been closely following the developments and approaches to the regulation of online media content and platforms. She has collaborated with various stakeholders in the region and beyond, including international organizations and CSOs, and has extensive experience as a consultant, researcher and contributor.

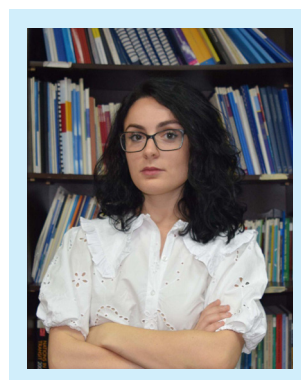


## Megi Reçi

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Megi Reçi is a Program Officer and Researcher at the Institute for Democracy and Mediation (IDM), where her work centers on civic space and governance issues. Within IDM she has led or contributed to research projects focusing public participation in decision-making, the sustainability of civil society, integrity and transparency in public administration, cybersecurity governance, and digital/human rights.

Before joining IDM, she worked for the INGO Civil Rights Defenders (CRD) focusing on rule of law, anti-discrimination, and freedom of expression. During her tenure, she engaged in human rights advocacy and contributed to projects supporting human rights defenders and journalists in Albania and the Western Balkans.



Furthermore, Megi has held diverse positions and provided consultancy services to both local and international organizations, with a particular focus on the realms of rule of law, media freedom, and digital rights. Her professional journey is marked by solid experience in research, policy analysis, and legal writing.

She graduated with honors from University of Tirana, Faculty of Law and holds a Master of Science in Public Law.

## Milica Tosic

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Milica Tosic is a Serbian attorney-at-law specializing in the digital rights field. Since joining Partners Serbia in 2021, she has been involved in projects focused on privacy and data protection, internet freedoms, digital rights, information security, and artificial intelligence. Within Partners Serbia, she closely follows legislative processes in these areas, particularly regarding Serbia's harmonization with relevant European policies and regulations. Her previous work experience includes roles in the corporate sector and law office. She is the author and coauthor of several publications that explore the protection of human rights in the digital world.



## Snezana Nikcevic

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Snezana Nikcevic is a creative producer with a background in media studies, currently leading civic involvement in digital transformation in the NGO 35mm. Part of the Working Group for the Digital Transformation Strategy of Montenegro. Producer of two features and one short film. Coordinated over 50 different A/V projects and major production services in the country, including BBC's Top Gear, Toyota, Samsung, Endemol Shine, Hotels.com, etc. Alumna of several skills development programs, including the Creative Producers program of the British Council, the Collaborative Governance in the Digital Era of the Swedish Institute for Young Professionals, the ODIHR/FES program for leadership and advocacy, and so on. Leverages informal education, advocacy, and research to contribute to the creative and digital development of individuals, organizations and policies.

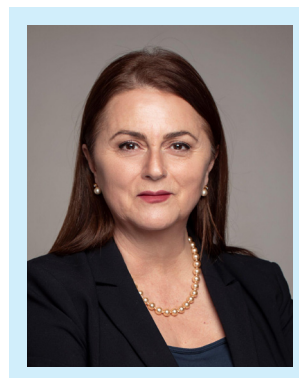


# Teuta Sahatqija

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Teuta Sahatqija is a seasoned consultant and business leader with a strong foundation in Electronics Engineering and Computer Sciences, holding a Bachelor's and Master's degree from the University of Pristina in Kosovo.

As a Certified Digital Transformation Expert accredited by BCC and ICMCI Austria, she leverages her expertise to spearhead the digital evolution of Kosovo businesses through her role as the Executive Director of the Women in Tech Kosovo (WiT) and CEO of TDS Consulting, an outsourcing company.



Teuta's consultancy extends to diverse domains, including Business Management, Artificial Intelligence, Blockchain and DeFi, Programming in Python, and Human Resources. Her commitment to continuous learning is evident in her completion of impactful programs at renowned institutions such as Dartmouth College and the European Business University in Luxembourg.

As a dedicated advocate for women in technology, she founded the Women in Tech Kosovo Chapter, aiming to digitally empower women and equip them with essential skills for the 4th industrial revolution.

In addition to her private sector engagements, Teuta has served in various public service roles, from Parliament Member to Advisor to the President of the Republic of Kosovo, Ambassador, Consul General in New York, and Deputy Minister of Foreign Affairs, providing her with a comprehensive understanding of global affairs.

# Annexes: lists of abbreviations, inputs and resources

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## Annex A: Albania

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### List of abbreviations:

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AECPS - Authority for Electronic Communications and Postal Services

AMA - Audiovisual Media Authority

AMC - Albanian Media Council

BIRN - Balkan Investigative Reporting Network

CoE - Council of Europe

CRCA - Children's Human Rights Centre of Albania

DMA - Digital Markets Act

DSA - Digital Services Act

DSC - Digital Service Coordinator

ECHR - European Convention on Human Rights

ENEMO - European Network of Election Monitoring Organizations

EU - European Union

GAPA - General Analytical Program of Acts

IDP - Information and Data Protection Commissioner

IDM - Institute for Democracy and Mediation

IDEA - International Institute for Democracy and Electoral Assistance

MIE - Ministry of Infrastructure and Energy

MIEC - Ministry of Innovation, Economy and Culture

NDI - National Democratic Institute

NAIS - National Agency for the Information Society

NPEI - National Plan on European Integration

OSCE - Organization for Security and Co-operation in Europe

ODIHR - Office for Democratic Institutions and Human Rights

RCC - Regional Cooperation Council

SciDev - Science & Innovation for Development

TAIEX - Technical Assistance and Information Exchange of the European Commission

### List of Freedom of Information Requests:

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1. Prime Ministers' Office, date of the response 4..03.2024;
2. Representative of the Ministry of Infrastructure and Energy, date of the response 27.03.2024;
3. Authority for Electronic Communications and Postal Services, date of the response 18.3.2024;
4. Audiovisual Media Authority, date of the response 5.3.2024;
5. Representative of the Information and Data Protection Commissioner, date of the response: 28.2.2024;
6. Ministry of Interior, date of the response 18.3.2024;
7. Ministry of Finance, date of the response 28.02.2024;
8. Ministry of Innovation, Economy and Culture, no response;

9. Competition Authority, date of the response 1.3.2024;
10. Election Commission, date of the response 11.3.2024;
11. Ministry of Justice, date of the response 28.2.2024;
12. Ministry for Europe and Foreign Affairs, date of the response 27.2.2024;
13. State Minister Leading the EU Negotiations, no response;
14. National Agency for the Information Security, date of the response

### List of interviewees and providers of written comments:

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1. Kristina Voko, Director of BIRN Albania, date of the interview/ written comments 27.4.2024;
2. Gentjan Skara, Lecturer of EU Law and Competition Law, Department of Law, Epoka University, date of the interview/ written comments 28.2.2024;
3. Sabina Babameto, Program Officer, NDI Albania, date of the interview/ written comments 10.3.2024;
4. Milena Jocić Tanasković, Expert on Digital Connectivity, Regional Cooperation Council, date of the interview/ written comments 25.3.2024.

## Annex B: Bosnia and Herzegovina

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### List of abbreviations:

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CRA - Communications Regulatory Agency

AVMSD - Audiovisual Media Services Directive

GDPR - General Data Protection Regulation

MCT - Ministry of Communications and Transport

DEI - Directorate of European Integration

CSF WB - Civil Society Forum of the Western Balkans



## List of interviewees:

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1. Milanka Sudžum, Head of Department for Communications, and Irida Varatanović, Head of Department for Informatization, Ministry of Communications and Transport
2. Azra Maslo, Head of Division for Programme Content and Complaints, Communications Regulatory Agency
3. Anida Sokol, editor and researcher, Mediacentar Sarajevo
4. Darko Brkan, Executive Director, UG Zašto ne
5. Danijel Kovačević, Political Advisor, Delegation of European Union to BiH
6. Nasir Muftić, Assistant Professor, Faculty of Law, University of Sarajevo

## Annex C: Kosovo

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### List of Abbreviations:

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DSA – Digital Service Act EU – European Union

CSOs – Civil Society Organizations IMC – Independent Media Commission

eIDAS – Electronic Identification and Trust Services

ARKEP – Regulatory Authority of Electronic and Postal Communication AIS – Agency of Information Society

ODK – Open Data Kosovo

NDS - National Development Strategy

### List of Interviews:

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The research that preceded the preparation of the Kosovar country overview included a desk analysis, research of the legal framework, jurisdictions, and capacities of the competent state authorities, as well as other relevant supporting reports. One interview was conducted

with one representative from the Ministry of Economy<sup>[315]</sup>. Information was collected through written communication with the Ministry of Economy.

Other non-state actors were contacted such as the Kosovo ICT Association (KIA).

## Annex D: North Macedonia

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### List of abbreviations:

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DSA - Digital Service Act

DSC - Digital Service Coordinator

DMA - Digital Market Act

EU - European Union

MISA - The Ministry of Information Society and Administration

NPPA - National Program on Adoption of the EU Acquis

AAAMS - Agency for Audio and Audio-visual Media Services

AEC - Agency for Electronic Communications

MARnet - Macedonian Academic Research Network

### List of interviews:

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1. Representative from the Ministry of Information Society and Administration. Answers to a questionnaire received by email on 13.03.2024;
2. Representative from the Government Cabinet of the Vice President for Good Governance. Answers to a questionnaire received by email on 13.03.2024;
3. Interview with representative from the Agency for Electronic Communications was conducted in person on 13.03.2024;

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[315] Conducted in April 2024.

4. Snezhana Trpeska, PhD, RESIS Institute. Answers to a questionnaire received by email on 07.03.2024;
5. Ana Sekulovska, PhD. Answers to a questionnaire received by email on 13.03.2024;
6. Representative from the Faculty of Electrical Engineering and Information Technologies; Answers to a questionnaire received by email on 13.03.2024;
7. Representative from CSO Center for change management. Answers to a questionnaire received by email on 13.03.2024;
8. Representative from CSO Konekt. Answers to a questionnaire received by email on 13.03.2024;
9. Biljana Georgievska, Council of Media Ethics. Answers to a questionnaire received by email on 13.03.2024.

## Annex E: Montenegro

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### List of abbreviations:

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AVMSD - Audiovisual Media Services Directive

BEREC - Body of European Regulators for Electronic Communications

CDT - Center for Democratic Transition

DSA - Digital Services Act

EFCSN - European Fact-Checking Standards Network

EU - European Union

GDPR - General Data Protection Regulation

IFCN - International Fact-Checking Network

ISPs - Intermediary Service Providers

NGO - Non-Governmental Organization

NIS 2 Directive - Directive on security of network and information systems

### List of interviews:

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1. Representative from the Agency for Electronic Media. Interview conducted in person on 11.03.2024;
2. Representatives from the Agency for Electronic Communication and Postal Services.
3. Interview conducted in person with three representatives of the Agency on 18.03.2024;
4. Interview with representative from the Media Directorate (Ministry of Culture and Media). Interview was conducted via Zoom on 27.03.2024;
5. Representative from the NGO Center for Democratic Transition. Interview conducted in person on 22.03.2024

## Annex F: Serbia

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### List of abbreviations:

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BIRN - Balkan Investigative Reporting Network

BEREC - Body of European Regulators for Electronic Communications

CSPs - Civil society organizations

ERGA - European Regulators Group for Audiovisual Media Services

GDPR - General Data Protection Regulation

IRG - Independent Regulators Group

OSCE - Organization for Security and Co-operation in Europe

RATEL - Regulatory Authority for Electronic Communications and Postal Services

REM - Regulatory Authority for Electronic Media

## List of interviews:

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1. Milan Todorovic, Secretary-general, Regulatory Authority for Electronic Media, conducted on March 19, 2024;
2. Branko Mirkovic, Head of Department for Networks, Services and Electronic Equipment, Regulatory Authority for Electronic Communications and Postal Services, provided written answers to interview questions on March 19, 2024;
3. Sanja Stankovic, Legal Advisor, Organization for Security and Co-operation in Europe, Mission to Serbia, conducted on March 19, 2024;
4. Tanja Maksic, Program Coordinator, Balkan Investigative Reporting Network, conducted on March 19, 2024;
5. Maja Zaric, Ministry of Information and Telecommunications, conducted on April 2, 2024.

