Digital Markets Act

2020/0374(COD) - 15/12/2021 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted by 642 votes to 8, with 46 abstentions, **amendments** to the proposal for a regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act).

The matter was referred back to the committee responsible for inter-institutional negotiations.

The main amendments adopted in plenary concern the following points:

Subject matter and scope

This purpose of the proposed regulation is to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring contestable and fair markets for all businesses to the benefit of both business users and end users in the digital sector across the Union where gatekeepers are present so as to foster innovation and increase consumer welfare.

Designation of gatekeepers

The proposed regulation will apply to the major companies providing so-called '**core platform services**' most prone to unfair practices. These include online intermediation services, social networks, search engines, operating systems such as on smart devices, internet of things or embedded digital services in vehicles, online social networking, video sharing platform services and number-independent interpersonal communication services, cloud computing services.

Members also included in the scope of the digital market act web browsers, virtual assistants and connected TV.

Quantitative thresholds

Members also amended the Commission's proposal to increase the quantitative thresholds for a company to fall under the scope of the digital markets act to **EUR 8 billion in the last three financial year** (as opposed to EUR 6.5 billion) in annual turnover in the European Economic Area (EEA) and a market capitalisation of **EUR 80 billion in the last financial year** (as opposed to 65 billion as proposed by the Commission).

To qualify as a gatekeeper, companies would also need to provide a core platform service in **at least three EU countries** and have **at least 45 million monthly end users**, as well as more than **10 000 business users**. A list of indicators to be used by the providers of core platforms services when measuring monthly end users and yearly business users should be provided in an Annex to the proposed Regulation.

The Commission should **designate** as gatekeeper any undertaking providing core platform services, excluding micro, small and medium-sized enterprises, meeting each of the requirements. In conducting its assessment, the Commission should take into account foreseeable developments of these elements including any planned concentrations involving another provider of core platform services or of any other services provided in the digital sector.

Obligations for gatekeepers

Parliament introduced new obligations and prohibitions directly applicable to market 'gatekeepers'.

In respect of each of its core platform services, a gatekeeper should refrain from imposing unfair conditions on businesses and consumers. Members included **additional requirements on the use of data for targeted or micro-targeted advertising and the interoperability of services**, e.g. number-independent interpersonal communication services and social network services.

An amendment stipulates that a gatekeeper should, for its own commercial purposes, and the placement of third-party advertising in its own services, **refrain from combining personal data for the purpose of delivering targeted or micro-targeted advertising**, except if there is a clear, explicit, renewed, informed consent, in line with the General Data Protection Regulation. Moreover, according to Members, personal data of **minors** should not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.

The proposal would give users the ability to un-install pre-installed software applications, such as apps, at any time on a basic platform service.

Killer acquisitions

The Commission might prohibit gatekeepers from engaging on acquisitions (including 'killer-acquisitions') in the areas relevant to this regulation such as digital or to the use of data related sectors e.g. gaming, research institutes, consumer goods, fitness devices, health tracking financial services, and for a limited period of time where this is necessary and proportionate to undue the damage caused by repeated infringements or to prevent further damage to the contestability and fairness of the internal market.

An amendment stipulates that adequate mechanisms should be put in place to enable whistleblowers to alert the competent authorities of potential or actual breaches of the Regulation and to protect them against retaliation.

EU level cooperation and fines

Members introduced the creation of a 'European High-Level Group of Digital Regulators' to facilitate cooperation and coordination between the Commission and Member States in their enforcement decisions. Establishing that group of regulators should enable the exchange of information and best practices among the Members States and enhance better monitoring and thus strengthen the implementation of this Regulation.

Regarding fines, Members proposed that Commission may impose on a gatekeeper fines not less than **4% and not exceeding 20%** of its total worldwide turnover in the preceding financial year where it finds that the gatekeeper, intentionally or negligently, fails to comply with the obligation to provide within a time-limit, which shall not be less than three months, information that is required for assessing an undertaking's designation as a gatekeeper or supplies incorrect, or misleading information.