


Basic information	
<b>2020/0374(COD)</b> COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Digital Markets Act  <b>Subject</b> 1.20.09 Protection of privacy and data protection 2.40 Free movement of services, freedom to provide 3.30.06 Information and communication technologies, digital technologies 3.30.25 International information networks and society, internet 3.45.05 Business policy, e-commerce, after-sales service, commercial distribution 4.60.06 Consumers' economic and legal interests  <b>Legislative priorities</b>  <a href="#">Joint Declaration 2021</a> <a href="#">Joint Declaration 2022</a>	

Key players				
European Parliament	<b>Committee responsible</b>		<b>Rapporteur</b>	<b>Appointed</b>
	<b>IMCO</b>	Internal Market and Consumer Protection		
			<b>Shadow rapporteur</b>  ANSIP Andrus (Renew)  KOLAJA Marcel (Greens /EFA)  JORON Virginie (ID)	
	<b>Committee for opinion</b>		<b>Rapporteur for opinion</b>	<b>Appointed</b>
	<b>ECON</b>	Economic and Monetary Affairs (Associated committee)		
	<b>ITRE</b>	Industry, Research and Energy (Associated committee)	ZORRINHO Carlos (S&D)	19/01/2021
	<b>TRAN</b>	Transport and Tourism		
	<b>CULT</b>	Culture and Education	KAMMEREVERT Petra (S&D)	09/02/2021
	<b>JURI</b>	Legal Affairs		
	<b>LIBE</b>	Civil Liberties, Justice and Home Affairs		

Council of the European Union		
European Commission	<b>Commission DG</b>	<b>Commissioner</b>
	Communications Networks, Content and Technology	BRETON Thierry
European Economic and Social Committee		
European Committee of the Regions		

Key events			
Date	Event	Reference	Summary
15/12/2020	Legislative proposal published	COM(2020)0842 	Summary
08/02/2021	Committee referral announced in Parliament, 1st reading		
20/05/2021	Referral to associated committees announced in Parliament		
23/11/2021	Vote in committee, 1st reading		
30/11/2021	Committee report tabled for plenary, 1st reading	A9-0332/2021	Summary
14/12/2021	Debate in Parliament	CRE link	
15/12/2021	Decision by Parliament, 1st reading	T9-0499/2021	Summary
15/12/2021	Matter referred back to the committee responsible for interinstitutional negotiations		
16/05/2022	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE732.531 GEDA/A/(2022)003821	
04/07/2022	Debate in Parliament	CRE link	
05/07/2022	Decision by Parliament, 1st reading	T9-0270/2022	Summary
05/07/2022	Results of vote in Parliament		
18/07/2022	Act adopted by Council after Parliament's 1st reading		
14/09/2022	Final act signed		
12/10/2022	Final act published in Official Journal		

Technical information	
<b>Procedure reference</b>	2020/0374(COD)
<b>Procedure type</b>	COD - Ordinary legislative procedure (ex-codecision procedure)
<b>Procedure subtype</b>	Legislation
<b>Legislative instrument</b>	Regulation
<b>Legal basis</b>	Rules of Procedure EP 57_o Treaty on the Functioning of the EU TFEU 114-p1
<b>Other legal basis</b>	Rules of Procedure EP 165
<b>Mandatory consultation of other institutions</b>	European Economic and Social Committee European Committee of the Regions
<b>Stage reached in procedure</b>	Procedure completed

## Documentation gateway

## European Parliament




Document type	Committee	Reference	Date	Summary
Amendments tabled in committee		<a href="#">PE693.662</a>	01/06/2021	
Committee draft report		<a href="#">PE692.792</a>	01/06/2021	
Amendments tabled in committee		<a href="#">PE695.082</a>	29/06/2021	
Amendments tabled in committee		<a href="#">PE695.090</a>	30/06/2021	
Amendments tabled in committee		<a href="#">PE695.132</a>	30/06/2021	
Amendments tabled in committee		<a href="#">PE695.143</a>	07/07/2021	
Amendments tabled in committee		<a href="#">PE695.198</a>	07/07/2021	
Amendments tabled in committee		<a href="#">PE695.196</a>	07/07/2021	
Amendments tabled in committee		<a href="#">PE695.197</a>	07/07/2021	
Amendments tabled in committee		<a href="#">PE696.323</a>	27/07/2021	
Amendments tabled in committee		<a href="#">PE696.540</a>	09/09/2021	
Amendments tabled in committee		<a href="#">PE696.538</a>	09/09/2021	
Amendments tabled in committee		<a href="#">PE696.537</a>	09/09/2021	
Amendments tabled in committee		<a href="#">PE696.561</a>	10/09/2021	
Amendments tabled in committee		<a href="#">PE696.562</a>	10/09/2021	
Amendments tabled in committee		<a href="#">PE696.448</a>	10/09/2021	
Committee opinion	<a href="#">TRAN</a>	<a href="#">PE691.253</a>	29/09/2021	
Committee opinion	<a href="#">CULT</a>	<a href="#">PE693.640</a>	04/10/2021	
Committee opinion	<a href="#">LIBE</a>	<a href="#">PE693.946</a>	18/10/2021	
Committee opinion	<a href="#">ECON</a>	<a href="#">PE693.930</a>	28/10/2021	
Committee opinion	<a href="#">JURI</a>	<a href="#">PE693.727</a>	05/11/2021	
Committee opinion	<a href="#">ITRE</a>	<a href="#">PE693.907</a>	24/11/2021	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A9-0332/2021</a>	30/11/2021	<a href="#">Summary</a>
Text adopted by Parliament, partial vote at 1st reading /single reading		<a href="#">T9-0499/2021</a>	15/12/2021	<a href="#">Summary</a>
Text agreed during interinstitutional negotiations		<a href="#">PE732.531</a>	11/05/2022	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T9-0270/2022</a>	05/07/2022	<a href="#">Summary</a>

## Council of the EU

Document type	Reference	Date	Summary
Coreper letter confirming interinstitutional agreement	<a href="#">GEDA/A/(2022)003821</a>	11/05/2022	
Draft final act	<a href="#">00017/2022/LEX</a>	14/09/2022	

## European Commission

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Document type	Reference	Date	Summary
Legislative proposal	COM(2020)0842 	15/12/2020	Summary
Document attached to the procedure	SWD(2020)0363	16/12/2020	
Document attached to the procedure	SWD(2020)0364 	16/12/2020	
Document attached to the procedure	SEC(2020)0437	16/12/2020	
Commission response to text adopted in plenary	SP(2022)483	21/09/2022	
Follow-up document	COM(2024)0106 	06/03/2024	

#### National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	CZ_CHAMBER	COM(2020)0842	25/02/2021	
Contribution	ES_PARLIAMENT	SWD(2020)0363	19/03/2021	
Contribution	ES_PARLIAMENT	SWD(2020)0364	19/03/2021	
Contribution	ES_PARLIAMENT	COM(2020)0842	19/03/2021	
Contribution	CZ_SENATE	COM(2020)0842	22/03/2021	
Contribution	DE_BUNDESRAT	COM(2020)0842	06/04/2021	
Contribution	IT_CHAMBER	COM(2020)0842	02/07/2021	
Contribution	FR_SENATE	COM(2020)0842	13/10/2021	

#### Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	N9-0019/2021 OJ C 147 26.04.2021, p. 0004	10/02/2021	
CofR	Committee of the Regions: opinion	CDR5356/2020	30/06/2021	

#### Additional information

Source	Document	Date
EP Research Service	Briefing	09/02/2022

## Meetings with interest representatives published in line with the Rules of Procedure

### Rapporteurs, Shadow Rapporteurs and Committee Chairs

Name	Role	Committee	Date	Interest representatives
KOLAJA Marcel	Shadow rapporteur	IMCO	30/05/2024	Zoom Video Communications, Inc.

KOLAJA Marcel	Shadow rapporteur	IMCO	29/05/2024	Google
KOLAJA Marcel	Shadow rapporteur	IMCO	06/03/2024	Allegro sp. z o.o.
KOLAJA Marcel	Shadow rapporteur	IMCO	27/02/2024	Kelkoo Group Limited
KOLAJA Marcel	Shadow rapporteur	IMCO	06/12/2023	EUTOP Europe GmbH
KOLAJA Marcel	Shadow rapporteur	IMCO	12/10/2023	the Mozilla Foundation
KOLAJA Marcel	Shadow rapporteur	IMCO	10/02/2023	New Vector (trading as Element)
REPASI René	Shadow rapporteur	IMCO	12/07/2022	DuckDuckGo, Inc.
ANDRESEN Rasmus	Shadow rapporteur for opinion	ITRE	07/07/2022	DuckDuckGo, Inc.
REPASI René	Shadow rapporteur	IMCO	10/06/2022	1&1 AG
REPASI René	Shadow rapporteur	IMCO	02/06/2022	Bureau Européen des Unions de Consommateurs
REPASI René	Shadow rapporteur	IMCO	20/05/2022	CPDP (Computers, Privacy and Data Protection)
REPASI René	Shadow rapporteur	IMCO	08/03/2022	Margrethe Vestager, Commissioner for Competition
REPASI René	Shadow rapporteur	IMCO	28/02/2022	LobbyControl
REPASI René	Shadow rapporteur	IMCO	24/02/2022	Secretary of State for Digital Transition and Electronic Communications, French Ministry of Economy and Finance
REPASI René	Shadow rapporteur	IMCO	22/02/2022	LobbyControl – Initiative für Transparenz und Demokratie e.V.
REPASI René	Shadow rapporteur	IMCO	15/02/2022	Directorate-General Connect
KOLAJA Marcel	Shadow rapporteur	IMCO	10/02/2022	New Vector (trading as Element) Open-Xchange AG
REPASI René	Shadow rapporteur	IMCO	09/02/2022	Directorate-General Competition

## Other Members

Name	Date	Interest representatives
ZLE Roberts	20/02/2024	EUTOP Europe GmbH
ZLE Roberts	19/02/2024	Apple Inc.
VANDENKENDELAERE Tom	18/10/2023	Apple Inc.
MELCHIOR Karen	04/03/2022	DuckDuckGo, Inc.
DE MEO Salvatore	21/09/2021	Confindustria Cultura Italia
DE MEO Salvatore	24/06/2021	Apple Inc.
DE MEO Salvatore	05/05/2021	Mediaset

Final act	
<a href="#">Regulation 2022/1925</a> OJ OJ L 10.01.2025	<a href="#">Summary</a>
<a href="#">Corrigendum to final act 32022R1925R(02)</a> OJ OJ L 10.01.2025	

# 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.

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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.

## Digital Markets Act

2020/0374(COD) - 30/11/2021 - Committee report tabled for plenary, 1st reading/single reading

The Committee on the Internal Market and Consumer Protection adopted the by Andreas SCHWAB (EPP, DE) on 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 committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure be amended as follows.

Firstly, as a reminder, digital services in general and online platforms in particular play an increasingly important role in the economy, in particular in the internal market, by providing business users with gateways to reach end users throughout the Union and beyond, by facilitating cross-border trade and by opening entirely new business opportunities to a large number of companies in the Union to the benefit of Union's consumers.

### **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, online advertising services, cloud computing, and video-sharing services, which meet the relevant criteria to be designated as 'gatekeepers'. Members also included in the scope of the digital market act web browsers, virtual assistants and connected TV.

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** (as opposed to EUR 6.5 billion) in annual turnover in the European Economic Area (EEA) and a market capitalisation of **EUR 80 billion** (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.

### **Obligations for 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.

The proposal 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.

### **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.

## **Digital Markets Act**

2020/0374(COD) - 15/12/2020 - Legislative proposal

**PURPOSE:** to ensure the proper functioning of the internal market by promoting effective competition in digital markets and in particular a fair and contestable online platform environment (Digital Markets Act).

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**ROLE OF THE EUROPEAN PARLIAMENT:** the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

**BACKGROUND:** digital services cover a wide range of daily activities including online intermediation services, such as online marketplaces, online social networking services, online search engines, operating systems or software application stores. They increase consumer choice, improve efficiency and competitiveness of industry and can enhance civil participation in society. However, whereas over 10 000 online platforms operate in Europe's digital economy, most of which are SMEs, a small number of large online platforms capture the biggest share of the overall value generated.

These large platforms increasingly act as gateways or gatekeepers between business users and end users and enjoy an entrenched and durable position. The proposed Digital Markets Act aims at preventing gatekeepers from imposing unfair conditions on businesses and consumers and at ensuring the openness of important digital services.

Common rules across the single market are needed to foster innovation, growth and competitiveness, and facilitate the scaling up of smaller platforms, small and medium-sized enterprises and start-ups who will have a single, clear framework at EU level.

The proposed [Digital Services Act](#) and Digital Markets Act encompass a single set of new rules applicable across the whole EU. They will create a safer and more open digital space, with European values at its centre.



CONTENT: the aim of the proposed regulation is to lay down harmonised rules ensuring contestable and fair markets in the digital sector across the EU where gatekeepers are present. It should apply to core platform services provided or offered by gatekeepers to business users established in the EU or end users established or located in the Union, irrespective of the place of establishment or residence of the gatekeepers and irrespective of the law otherwise applicable to the provision of service.

Its main objectives are:

- to address market failures to ensure contestable and competitive digital markets for increased innovation and consumer choice;
- to address gatekeepers' unfair conduct;
- to enhance coherence and legal certainty to preserve the internal market.

### ***Specific provisions of the proposal***

The proposal:

- should only apply to large companies that would be designated as 'gatekeepers'. For this purpose, it contains the provisions concerning the designation of gatekeepers. More specifically, it establishes the conditions under which providers of core platform services should be designated as gatekeepers either based on the quantitative criteria (through a presumption subject to counter-demonstration) or following a case-by-case assessment during a market investigation;
- sets out the practices of gatekeepers that limit contestability and that are unfair;
- provides rules for carrying out market investigations: (i) designation of a gatekeeper; (ii) investigation of systematic non-compliance and (iii) investigation of new core platform services and new practices;
- contains the provisions concerning the implementation and enforcement of this Regulation. These include the Commission's ability to request information, to conduct interviews and make statements and on-site inspections, to adopt interim measures and to make voluntary measures binding on the gate-keepers. In case of non-compliance, the Commission can issue non-compliance decisions, as well as impose fines and periodic penalty payments for breaches of the Regulation.

### ***Budgetary implications***

The total financial resources necessary for the implementation of the proposal in the 2021-2027 period should amount to EUR 81.090 million, including EUR 50.640 million of administrative costs and EUR 30.450 million entirely covered by the allocations foreseen in the multiannual financial framework 2021-2027 under the financial envelopes of the Single Market Programme and the Digital Europe Programme. The financing should support *inter alia* activities such as carrying out the designation of providers of core platform services, carrying out market investigations and performing any other investigative actions, enforcement actions and monitoring activities.

## **Digital Markets Act**

2020/0374(COD) - 12/10/2022 - Final act

PURPOSE: to ensure contestability and fairness in the digital sector in general, and in essential platform services in particular, with a view to fostering innovation, quality of digital products and services, fairness and price competitiveness, and a high level of quality and choice for end-users in the digital sector.

LEGISLATIVE ACT: Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

CONTENT: the digital markets act aims to ensure that the digital sector is competitive and fair. It defines **clear rules for large platforms**. It aims to make sure that no large online platform acts as a 'gatekeeper', a private rule-maker in digital markets by controlling at least one so-called 'core platform services'.

**Core platform services** include: (i) online intermediation services (i.e. marketplaces, app stores); (ii) online search engines; (iii) social networking; (iv) cloud services; (v) number-independent interpersonal communication services; (vi) operating systems; (vii) web browsers; (viii) virtual assistants; (ix) cloud services; (x) online advertising services.

### ***Designation of gatekeepers***

To be considered a gatekeeper a platform must either have had an annual turnover of at least **EUR 7.5 billion** within the European Union (EU) in the past three years or have a market valuation of at least **EUR 75 billion**, and secondly it must have at least **45 million monthly end users** and at least **10 000 business users** established in the EU.

The platform must also control one or more core platform services in **at least three Member States**.

The Commission may conduct a market investigation to examine whether a company providing core platform services should be designated as a gatekeeper.

### ***Obligations for gatekeepers***

New obligations and prohibitions directly applicable to market 'gatekeepers' have been introduced.

A gatekeeper should in particular:

- allow third parties to inter-operate with the gatekeeper's own services in certain specific situations;
- allow their business users to access the data that they generate in their use of the gatekeeper's platform;

- provide companies advertising on their platform with the tools and information necessary for advertisers and publishers to carry out their own independent verification of their advertisements hosted by the gatekeeper;
- allow their business users to promote their offer and conclude contracts with their customers outside the gatekeeper's platform;
- ensure that unsubscribing from core platform services is as easy as subscribing;
- provide information on the number of users that visit their platforms to determine whether the platform can be identified as a gatekeeper;
- give business users access to their marketing or advertising performance data on the platform;
- inform the European Commission of their acquisitions and mergers;
- ensure that the basic functionalities of instant messaging services are interoperable.

On the other hand, the gatekeeper platforms **may no longer**:

- treat services and products offered by the gatekeeper itself more favourably in ranking than similar services or products offered by third parties on the gatekeeper's platform;
- track end users outside of the gatekeepers' core platform service for the purpose of targeted advertising, without effective consent having been granted;
- prevent consumers from linking up to businesses outside their platforms;
- pre-install certain software applications or prevent users from easily un-installing them;
- restrict business users of platforms;
- prevent or restrict business users or end users from raising any issue of non-compliance with the relevant Union or national law by the gatekeeper with any relevant public authority, including national courts, related to any practice of the gatekeeper.

#### **Governance**

The **Commission** will be the only authority empowered to enforce the Regulation. An Advisory Committee and a High Level Group will be set up to assist the European Commission and facilitate its work. The Commission may decide to initiate a dialogue on regulatory measures to ensure that access controllers have a clear understanding of the rules. It may also develop guidelines to provide further guidance on different aspects of the Regulation.

#### **Sanctions**

The Commission will have **powers of investigation, control and enforcement**. In order to carry out its tasks, it may require undertakings and associations of undertakings to provide all necessary information, conduct hearings and take statements, carry out inspections or adopt an implementing act ordering interim measures against a gatekeeper.

If a gatekeeper breaches the rules set out in the legislation, the Commission may impose fines of up to 10% of its total worldwide turnover in the previous financial year, or up to 20% in the case of repeated breaches.

If an access controller engages in systematic **non-compliance** (i.e. breaches the rules at least three times in eight years), the Commission may open a **market investigation** and, if necessary, impose behavioural or structural remedies.

ENTRY INTO FORCE: 1.11.2022.

APPLICATION: from 2.5.2023.

## **Digital Markets Act**

2020/0374(COD) - 05/07/2022 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 588 votes to 11, with 31 abstentions, a legislative resolution on 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 European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

#### **Purpose and scope**

The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring for all businesses, contestable and fair markets in the digital sector across the Union where gatekeepers are present, to the benefit of business users and end users.

#### **Designation of gatekeepers**

This Regulation should apply to core platform services which are most prone to unfair practices. These include online intermediation services, online social networks, search engines, video sharing platform services, number independent interpersonal communication services, operating systems, web browsers, virtual assistants, cloud computing services and online advertising services that meet the minimum criteria for designation as 'gatekeepers'.

#### **Quantitative thresholds**

An undertaking will fall within the scope of the digital markets legislation if:

- it has had an annual turnover in the Union of **EUR 7.5 billion** or more in each of the last three financial years, or if its average market capitalisation or fair market value equivalent was at least EUR 75 billion in the last financial year, and it provides the same core platform service in at least three Member States;

- it provides a core platform service which, in the last financial year, had at least **45 million active end-users per month** established or located in the Union and at least 10 000 yearly active business users established in the Union.

The Commission should designate as gatekeepers any undertaking providing core platform services that has significant weight in the internal market but does not meet each of the thresholds. For this purpose, the Commission should take into account elements such as (i) the size, including turnover and market capitalisation, activities and position of that undertaking, (ii) the number of business users using the core platform service to reach end-users and the number of end-users (iii) network effects and data driven advantages, (iv) any scale and scope effects from which the undertaking benefits, (v) business user and end user lock-in; and (v) a conglomerate corporate structure or vertical integration of that undertaking.

### ***Obligations for gatekeepers***

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

Under the amended Regulation, a gatekeeper **should not**, unless this specific choice has been presented to the end-user and the end-user has given his or her consent within the meaning of the General Data Protection Regulation:

- process, for the purpose of providing online advertising services, personal data of end users using services of third parties that make use of core platform services of the gatekeeper;
- combine personal data from the relevant core platform service with personal data from any further core platform services or from any other services provided by the gatekeeper or with personal data from third-party services;
- cross-use personal data from the relevant core platform service in other services provided separately by the gatekeeper, including other core platform services, and vice-versa; and
- sign in end users to other services of the gatekeeper in order to combine personal data.

Gatekeepers should not be allowed to ask end-users for consent **more than once a year** for the same processing purpose for which they initially did not give consent or withdrew their consent.

In addition, the gatekeeper **should not**:

- prevent or restrict business users or end users from raising any issue of non-compliance with the relevant Union or national law by the gatekeeper with any relevant public authority, including national courts, related to any practice of the gatekeeper;
- require end users to use, or business users to use, to offer, or to interoperate with, an identification service, a web browser engine or a payment service, or technical services that support the provision of payment services, such as payment systems for in-app purchases, of that gatekeeper in the context of services provided by the business users using that gatekeeper's core platform services;
- require business users or end users to subscribe to, or register with, any further core platform services listed in the designation decision, as a condition for being able to use, access, sign up for or registering with any of that gatekeeper's core platform services;
- prevent users from **easily uninstalling pre-installed software** or applications or from using third party applications or application shops.

The gatekeeper should technically enable end users to easily change default settings on the operating system, virtual assistant and web browser of the gatekeeper that direct or steer end users to products or services provided by the gatekeeper.

### ***Obligation for gatekeepers on interoperability of number-independent interpersonal communications services***

A new provision stipulates that gatekeepers should therefore ensure, free of charge and upon request, interoperability with certain basic functionalities of their number-independent interpersonal communications services that they provide to their own end users, to third-party providers of such services.

Gatekeepers should ensure interoperability for third-party providers of number-independent interpersonal communications services that offer or intend to offer their number-independent interpersonal communications services to end users and business users in the Union.

### ***Enforcement of the legislation***

The Commission is the sole authority empowered to enforce this Regulation. In order to support the Commission, it should be possible for Member States to empower their national competent authorities enforcing competition rules to conduct investigations into possible non-compliance by gatekeepers with certain obligations under this Regulation.

In order to ensure coherence and effective complementarity in the implementation of this Regulation and of other sectoral regulations applicable to gatekeepers, the Commission should benefit from the expertise of a dedicated **high-level group**. It should be possible for that high-level group to also assist the Commission by means of advice, expertise and recommendations, when relevant, in general matters relating to the implementation or enforcement of this Regulation.

The Commission may also develop guidelines to provide further guidance on different aspects of the Regulation or to assist undertakings providing core platform services in implementing the obligations under the Regulation.

### ***Fines***

In order to ensure that the new rules relating to the legislation are properly implemented, the Commission should be able to conduct market investigations. If a gatekeeper fails to comply with the rules, the Commission may impose fines of up to 10% of its total worldwide turnover in the previous financial year, or even **20%** in the case of repeated breaches.

**Whistleblowers** should be able to bring new information to the attention of the competent authorities which may help them to detect infringements of this Regulation and enable them to impose penalties.