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 gatekeepers 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 gatekeepers 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.