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► B REGULATION (EU) 2022/1925 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 14 September 2022
on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and
(EU) 2020/1828 (Digital Markets Act)
(Text with EEA relevance)
(OJ L 265, 12.10.2022, p. 1)

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**REGULATION (EU) 2022/1925 OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL**

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CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

1. 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.

2. This Regulation shall apply to core platform services provided or offered by gatekeepers to business users established in the Union 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.

3. This Regulation shall not apply to markets related to:

- (a) electronic communications networks as defined in Article 2, point (1), of Directive (EU) 2018/1972;
- (b) electronic communications services as defined in Article 2, point (4), of Directive (EU) 2018/1972, other than those related to number-independent interpersonal communications services.

4. With regard to interpersonal communications services as defined in Article 2, point (5) of Directive (EU) 2018/1972, this Regulation is without prejudice to the powers and responsibilities granted to the national regulatory and other competent authorities by virtue of Article 61 of that Directive.

5. In order to avoid the fragmentation of the internal market, Member States shall not impose further obligations on gatekeepers by way of laws, regulations or administrative measures for the purpose of ensuring contestable and fair markets. Nothing in this Regulation precludes Member States from imposing obligations on undertakings, including undertakings providing core platform services, for matters falling outside the scope of this Regulation, provided that those obligations are compatible with Union law and do not result from the fact that the relevant undertakings have the status of a gatekeeper within the meaning of this Regulation.

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6. This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of:

- (a) national competition rules prohibiting anti-competitive agreements, decisions by associations of undertakings, concerted practices and abuses of dominant positions;
- (b) national competition rules prohibiting other forms of unilateral conduct insofar as they are applied to undertakings other than gatekeepers or amount to the imposition of further obligations on gatekeepers; and
- (c) Council Regulation (EC) No 139/2004 ⁽¹⁾ and national rules concerning merger control.

7. National authorities shall not take decisions which run counter to a decision adopted by the Commission under this Regulation. The Commission and Member States shall work in close cooperation and coordinate their enforcement actions on the basis of the principles established in Articles 37 and 38.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘gatekeeper’ means an undertaking providing core platform services, designated pursuant to Article 3;
- (2) ‘core platform service’ means any of the following:
 - (a) online intermediation services;
 - (b) online search engines;
 - (c) online social networking services;
 - (d) video-sharing platform services;
 - (e) number-independent interpersonal communications services;
 - (f) operating systems;
 - (g) web browsers;
 - (h) virtual assistants;
 - (i) cloud computing services;
 - (j) online advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by an undertaking that provides any of the core platform services listed in points (a) to (i);

⁽¹⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

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- (3) ‘information society service’ means any service as defined in Article 1(1), point (b), of Directive (EU) 2015/1535;
- (4) ‘digital sector’ means the sector of products and services provided by means of, or through, information society services;
- (5) ‘online intermediation services’ means online intermediation services as defined in Article 2, point (2), of Regulation (EU) 2019/1150;
- (6) ‘online search engine’ means an online search engine as defined in Article 2, point (5), of Regulation (EU) 2019/1150;
- (7) ‘online social networking service’ means a platform that enables end users to connect and communicate with each other, share content and discover other users and content across multiple devices and, in particular, via chats, posts, videos and recommendations;
- (8) ‘video-sharing platform service’ means a video-sharing platform service as defined in Article 1(1), point (aa), of Directive 2010/13/EU;
- (9) ‘number-independent interpersonal communications service’ means a number-independent interpersonal communications service as defined in Article 2, point (7), of Directive (EU) 2018/1972;
- (10) ‘operating system’ means a system software that controls the basic functions of the hardware or software and enables software applications to run on it;
- (11) ‘web browser’ means a software application that enables end users to access and interact with web content hosted on servers that are connected to networks such as the Internet, including standalone web browsers as well as web browsers integrated or embedded in software or similar;
- (12) ‘virtual assistant’ means a software that can process demands, tasks or questions, including those based on audio, visual, written input, gestures or motions, and that, based on those demands, tasks or questions, provides access to other services or controls connected physical devices;
- (13) ‘cloud computing service’ means a cloud computing service as defined in Article 4, point (19), of Directive (EU) 2016/1148 of the European Parliament and of the Council ⁽¹⁾;
- (14) ‘software application stores’ means a type of online intermediation services, which is focused on software applications as the intermediated product or service;

⁽¹⁾ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).

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- (15) ‘software application’ means any digital product or service that runs on an operating system;
- (16) ‘payment service’ means a payment service as defined in Article 4, point (3) of Directive (EU) 2015/2366;
- (17) ‘technical service supporting payment service’ means a service within the meaning of Article 3, point (j), of Directive (EU) 2015/2366;
- (18) ‘payment system for in-app purchases’ means a software application, service or user interface which facilitates purchases of digital content or digital services within a software application, including content, subscriptions, features or functionality, and the payments for such purchases;
- (19) ‘identification service’ means a type of service provided together with or in support of core platform services that enables any type of verification of the identity of end users or business users, regardless of the technology used;
- (20) ‘end user’ means any natural or legal person using core platform services other than as a business user;
- (21) ‘business user’ means any natural or legal person acting in a commercial or professional capacity using core platform services for the purpose of or in the course of providing goods or services to end users;
- (22) ‘ranking’ means the relative prominence given to goods or services offered through online intermediation services, online social networking services, video-sharing platform services or virtual assistants, or the relevance given to search results by online search engines, as presented, organised or communicated by the undertakings providing online intermediation services, online social networking services, video-sharing platform services, virtual assistants or online search engines, irrespective of the technological means used for such presentation, organisation or communication and irrespective of whether only one result is presented or communicated;
- (23) ‘search results’ means any information in any format, including textual, graphic, vocal or other outputs, returned in response to, and related to, a search query, irrespective of whether the information returned is a paid or an unpaid result, a direct answer or any product, service or information offered in connection with the organic results, or displayed along with or partly or entirely embedded in them;
- (24) ‘data’ means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording;

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- (25) ‘personal data’ means personal data as defined in Article 4, point (1), of Regulation (EU) 2016/679;
- (26) ‘non-personal data’ means data other than personal data;
- (27) ‘undertaking’ means an entity engaged in an economic activity, regardless of its legal status and the way in which it is financed, including all linked enterprises or connected undertakings that form a group through the direct or indirect control of an enterprise or undertaking by another;
- (28) ‘control’ means the possibility of exercising decisive influence on an undertaking, within the meaning of Article 3(2) of Regulation (EC) No 139/2004;
- (29) ‘interoperability’ means the ability to exchange information and mutually use the information which has been exchanged through interfaces or other solutions, so that all elements of hardware or software work with other hardware and software and with users in all the ways in which they are intended to function;
- (30) ‘turnover’ means the amount derived by an undertaking within the meaning of Article 5(1) of Regulation (EC) No 139/2004;
- (31) ‘profiling’ means profiling as defined in Article 4, point (4), of Regulation (EU) 2016/679;
- (32) ‘consent’ means consent as defined in Article 4, point (11), of Regulation (EU) 2016/679;
- (33) ‘national court’ means a court or tribunal of a Member State within the meaning of Article 267 TFEU.

CHAPTER II

GATEKEEPERS*Article 3***Designation of gatekeepers**

1. An undertaking shall be designated as a gatekeeper if:
 - (a) it has a significant impact on the internal market;
 - (b) it provides a core platform service which is an important gateway for business users to reach end users; and
 - (c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future.
2. An undertaking shall be presumed to satisfy the respective requirements in paragraph 1:
 - (a) as regards paragraph 1, point (a), where it achieves an annual Union turnover equal to or above EUR 7,5 billion in each of the last three financial years, or where its average market capitalisation or its equivalent fair market value amounted to at least EUR 75 billion in the last financial year, and it provides the same core platform service in at least three Member States;

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- (b) as regards paragraph 1, point (b), where it provides a core platform service that in the last financial year has at least 45 million monthly active end users established or located in the Union and at least 10 000 yearly active business users established in the Union, identified and calculated in accordance with the methodology and indicators set out in the Annex;
- (c) as regards paragraph 1, point (c), where the thresholds in point (b) of this paragraph were met in each of the last three financial years.

3. Where an undertaking providing core platform services meets all of the thresholds in paragraph 2, it shall notify the Commission thereof without delay and in any event within 2 months after those thresholds are met and provide it with the relevant information identified in paragraph 2. That notification shall include the relevant information identified in paragraph 2 for each of the core platform services of the undertaking that meets the thresholds in paragraph 2, point (b). Whenever a further core platform service provided by the undertaking that has previously been designated as a gatekeeper meets the thresholds in paragraph 2, points (b) and (c), such undertaking shall notify the Commission thereof within 2 months after those thresholds are satisfied.

Where the undertaking providing the core platform service fails to notify the Commission pursuant to the first subparagraph of this paragraph and fails to provide within the deadline set by the Commission in the request for information pursuant to Article 21 all the relevant information that is required for the Commission to designate the undertaking concerned as gatekeeper pursuant to paragraph 4 of this Article, the Commission shall still be entitled to designate that undertaking as a gatekeeper, based on information available to the Commission.

Where the undertaking providing core platform services complies with the request for information pursuant to the second subparagraph of this paragraph or where the information is provided after the expiration of the deadline referred to in that subparagraph, the Commission shall apply the procedure set out in paragraph 4.

4. The Commission shall designate as a gatekeeper, without undue delay and at the latest within 45 working days after receiving the complete information referred to in paragraph 3, an undertaking providing core platform services that meets all the thresholds in paragraph 2.

5. The undertaking providing core platform services may present, with its notification, sufficiently substantiated arguments to demonstrate that, exceptionally, although it meets all the thresholds in paragraph 2, due to the circumstances in which the relevant core platform service operates, it does not satisfy the requirements listed in paragraph 1.

Where the Commission considers that the arguments submitted pursuant to the first subparagraph by the undertaking providing core platform services are not sufficiently substantiated because they do not manifestly call into question the presumptions set out in paragraph 2 of this Article, it may reject those arguments within the time limit referred to in paragraph 4, without applying the procedure laid down in Article 17(3).

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Where the undertaking providing core platform services does present such sufficiently substantiated arguments manifestly calling into question the presumptions in paragraph 2 of this Article, the Commission may, notwithstanding the first subparagraph of this paragraph, within the time limit referred to in paragraph 4 of this Article, open the procedure laid down in Article 17(3).

If the Commission concludes that the undertaking providing core platform services was not able to demonstrate that the relevant core platform services that it provides do not satisfy the requirements of paragraph 1 of this Article, it shall designate that undertaking as a gatekeeper in accordance with the procedure laid down in Article 17(3).

6. The Commission is empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation by specifying the methodology for determining whether the quantitative thresholds laid down in paragraph 2 of this Article are met, and to regularly adjust that methodology to market and technological developments, where necessary.

7. The Commission is empowered to adopt delegated acts in accordance with Article 49 to amend this Regulation by updating the methodology and the list of indicators set out in the Annex.

8. The Commission shall designate as a gatekeeper, in accordance with the procedure laid down in Article 17, any undertaking providing core platform services that meets each of the requirements of paragraph 1 of this Article, but does not satisfy each of the thresholds in paragraph 2 of this Article.

For that purpose, the Commission shall take into account some or all of the following elements, insofar as they are relevant for the undertaking providing core platform services under consideration:

- (a) the size, including turnover and market capitalisation, operations and position of that undertaking;
- (b) the number of business users using the core platform service to reach end users and the number of end users;
- (c) network effects and data driven advantages, in particular in relation to that undertaking's access to, and collection of, personal data and non-personal data or analytics capabilities;
- (d) any scale and scope effects from which the undertaking benefits, including with regard to data, and, where relevant, to its activities outside the Union;
- (e) business user or end user lock-in, including switching costs and behavioural bias reducing the ability of business users and end users to switch or multi-home;
- (f) a conglomerate corporate structure or vertical integration of that undertaking, for instance enabling that undertaking to cross subsidise, to combine data from different sources or to leverage its position; or

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(g) other structural business or service characteristics.

In carrying out its assessment under this paragraph, the Commission shall take into account foreseeable developments in relation to the elements listed in the second subparagraph, including any planned concentrations involving another undertaking providing core platform services or providing any other services in the digital sector or enabling the collection of data.

Where an undertaking providing a core platform service that does not satisfy the quantitative thresholds of paragraph 2 fails to comply with the investigative measures ordered by the Commission in a significant manner, and that failure persists after that undertaking has been invited to comply within a reasonable time limit and to submit observations, the Commission may designate that undertaking as a gatekeeper on the basis of the facts available to the Commission.

9. For each undertaking designated as a gatekeeper pursuant to paragraph 4 or 8, the Commission shall list in the designation decision the relevant core platform services that are provided within that undertaking and which individually are an important gateway for business users to reach end users as referred to in paragraph 1, point (b).

10. The gatekeeper shall comply with the obligations laid down in Articles 5, 6 and 7 within 6 months after a core platform service has been listed in the designation decision pursuant to paragraph 9 of this Article.

Article 4

Review of the status of gatekeeper

1. The Commission may, upon request or on its own initiative, reconsider, amend or repeal at any moment a designation decision adopted pursuant to Article 3 for one of the following reasons:

- (a) there has been a substantial change in any of the facts on which the designation decision was based;
- (b) the designation decision was based on incomplete, incorrect or misleading information.

2. The Commission shall regularly, and at least every 3 years, review whether the gatekeepers continue to satisfy the requirements laid down in Article 3(1). That review shall also examine whether the list of core platform services of the gatekeeper which are individually an important gateway for business users to reach end users, as referred to in Article 3(1), point (b), needs to be amended. Those reviews shall have no suspending effect on the gatekeeper's obligations.

The Commission shall also examine at least every year whether new undertakings providing core platform services satisfy those requirements.

Where the Commission, on the basis of the reviews pursuant to the first subparagraph, finds that the facts on which the designation of the undertakings providing core platform services as gatekeepers was based, have changed, it shall adopt a decision confirming, amending or repealing the designation decision.

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3. The Commission shall publish and update a list of gatekeepers and the list of the core platform services for which they need to comply with the obligations laid down in Chapter III on an on-going basis.

CHAPTER III

PRACTICES OF GATEKEEPERS THAT LIMIT CONTESTABILITY OR ARE UNFAIR*Article 5***Obligations for gatekeepers**

1. The gatekeeper shall comply with all obligations set out in this Article with respect to each of its core platform services listed in the designation decision pursuant to Article 3(9).

2. The gatekeeper shall not do any of the following:

- (a) 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;
- (b) 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;
- (c) 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
- (d) sign in end users to other services of the gatekeeper in order to combine personal data,

unless the end user has been presented with the specific choice and has given consent within the meaning of Article 4, point (11), and Article 7 of Regulation (EU) 2016/679.

Where the consent given for the purposes of the first subparagraph has been refused or withdrawn by the end user, the gatekeeper shall not repeat its request for consent for the same purpose more than once within a period of one year.

This paragraph is without prejudice to the possibility for the gatekeeper to rely on Article 6(1), points (c), (d) and (e) of Regulation (EU) 2016/679, where applicable.

3. The gatekeeper shall not prevent business users from offering the same products or services to end users through third-party online intermediation services or through their own direct online sales channel at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper.

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4. The gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its core platform service or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the core platform services of the gatekeeper.

5. The gatekeeper shall allow end users to access and use, through its core platform services, content, subscriptions, features or other items, by using the software application of a business user, including where those end users acquired such items from the relevant business user without using the core platform services of the gatekeeper.

6. The gatekeeper shall not directly or indirectly 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. This is without prejudice to the right of business users and gatekeepers to lay down in their agreements the terms of use of lawful complaints-handling mechanisms.

7. The gatekeeper shall not 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.

8. The gatekeeper shall not require business users or end users to subscribe to, or register with, any further core platform services listed in the designation decision pursuant to Article 3(9) or which meet the thresholds in Article 3(2), point (b), as a condition for being able to use, access, sign up for or registering with any of that gatekeeper's core platform services listed pursuant to that Article.

9. The gatekeeper shall provide each advertiser to which it supplies online advertising services, or third parties authorised by advertisers, upon the advertiser's request, with information on a daily basis free of charge, concerning each advertisement placed by the advertiser, regarding:

- (a) the price and fees paid by that advertiser, including any deductions and surcharges, for each of the relevant online advertising services provided by the gatekeeper,
- (b) the remuneration received by the publisher, including any deductions and surcharges, subject to the publisher's consent; and
- (c) the metrics on which each of the prices, fees and remunerations are calculated.

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In the event that a publisher does not consent to the sharing of information regarding the remuneration received, as referred to in point (b) of the first subparagraph, the gatekeeper shall provide each advertiser free of charge with information concerning the daily average remuneration received by that publisher, including any deductions and surcharges, for the relevant advertisements.

10. The gatekeeper shall provide each publisher to which it supplies online advertising services, or third parties authorised by publishers, upon the publisher's request, with free of charge information on a daily basis, concerning each advertisement displayed on the publisher's inventory, regarding:

- (a) the remuneration received and the fees paid by that publisher, including any deductions and surcharges, for each of the relevant online advertising services provided by the gatekeeper;
- (b) the price paid by the advertiser, including any deductions and surcharges, subject to the advertiser's consent; and
- (c) the metrics on which each of the prices and remunerations are calculated.

In the event an advertiser does not consent to the sharing of information, the gatekeeper shall provide each publisher free of charge with information concerning the daily average price paid by that advertiser, including any deductions and surcharges, for the relevant advertisements.

Article 6

Obligations for gatekeepers susceptible of being further specified under Article 8

1. The Gatekeeper shall comply with all obligations set out in this Article with respect to each of its core platform services listed in the designation decision pursuant to Article 3(9).

2. The gatekeeper shall not use, in competition with business users, any data that is not publicly available that is generated or provided by those business users in the context of their use of the relevant core platform services or of the services provided together with, or in support of, the relevant core platform services, including data generated or provided by the customers of those business users.

For the purposes of the first subparagraph, the data that is not publicly available shall include any aggregated and non-aggregated data generated by business users that can be inferred from, or collected through, the commercial activities of business users or their customers, including click, search, view and voice data, on the relevant core platform services or on services provided together with, or in support of, the relevant core platform services of the gatekeeper.

3. The gatekeeper shall allow and technically enable end users to easily un-install any software applications on the operating system of the gatekeeper, without prejudice to the possibility for that gatekeeper to restrict such un-installation in relation to software applications that are essential for the functioning of the operating system or of the device and which cannot technically be offered on a standalone basis by third parties.

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The gatekeeper shall allow and 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. That includes prompting end users, at the moment of the end users' first use of an online search engine, virtual assistant or web browser of the gatekeeper listed in the designation decision pursuant to Article 3(9), to choose, from a list of the main available service providers, the online search engine, virtual assistant or web browser to which the operating system of the gatekeeper directs or steers users by default, and the online search engine to which the virtual assistant and the web browser of the gatekeeper directs or steers users by default.

4. The gatekeeper shall allow and technically enable the installation and effective use of third-party software applications or software application stores using, or interoperating with, its operating system and allow those software applications or software application stores to be accessed by means other than the relevant core platform services of that gatekeeper. The gatekeeper shall, where applicable, not prevent the downloaded third-party software applications or software application stores from prompting end users to decide whether they want to set that downloaded software application or software application store as their default. The gatekeeper shall technically enable end users who decide to set that downloaded software application or software application store as their default to carry out that change easily.

The gatekeeper shall not be prevented from taking, to the extent that they are strictly necessary and proportionate, measures to ensure that third-party software applications or software application stores do not endanger the integrity of the hardware or operating system provided by the gatekeeper, provided that such measures are duly justified by the gatekeeper.

Furthermore, the gatekeeper shall not be prevented from applying, to the extent that they are strictly necessary and proportionate, measures and settings other than default settings, enabling end users to effectively protect security in relation to third-party software applications or software application stores, provided that such measures and settings other than default settings are duly justified by the gatekeeper.

5. The gatekeeper shall not treat more favourably, in ranking and related indexing and crawling, services and products offered by the gatekeeper itself than similar services or products of a third party. The gatekeeper shall apply transparent, fair and non-discriminatory conditions to such ranking.

6. The gatekeeper shall not restrict technically or otherwise the ability of end users to switch between, and subscribe to, different software applications and services that are accessed using the core platform services of the gatekeeper, including as regards the choice of Internet access services for end users.

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7. The gatekeeper shall allow providers of services and providers of hardware, free of charge, effective interoperability with, and access for the purposes of interoperability to, the same hardware and software features accessed or controlled via the operating system or virtual assistant listed in the designation decision pursuant to Article 3(9) as are available to services or hardware provided by the gatekeeper. Furthermore, the gatekeeper shall allow business users and alternative providers of services provided together with, or in support of, core platform services, free of charge, effective interoperability with, and access for the purposes of interoperability to, the same operating system, hardware or software features, regardless of whether those features are part of the operating system, as are available to, or used by, that gatekeeper when providing such services.

The gatekeeper shall not be prevented from taking strictly necessary and proportionate measures to ensure that interoperability does not compromise the integrity of the operating system, virtual assistant, hardware or software features provided by the gatekeeper, provided that such measures are duly justified by the gatekeeper.

8. The gatekeeper shall provide advertisers and publishers, as well as third parties authorised by advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the data necessary for advertisers and publishers to carry out their own independent verification of the advertisements inventory, including aggregated and non-aggregated data. Such data shall be provided in a manner that enables advertisers and publishers to run their own verification and measurement tools to assess the performance of the core platform services provided for by the gatekeepers.

9. The gatekeeper shall provide end users and third parties authorised by an end user, at their request and free of charge, with effective portability of data provided by the end user or generated through the activity of the end user in the context of the use of the relevant core platform service, including by providing, free of charge, tools to facilitate the effective exercise of such data portability, and including by the provision of continuous and real-time access to such data.

10. The gatekeeper shall provide business users and third parties authorised by a business user, at their request, free of charge, with effective, high-quality, continuous and real-time access to, and use of, aggregated and non-aggregated data, including personal data, that is provided for or generated in the context of the use of the relevant core platform services or services provided together with, or in support of, the relevant core platform services by those business users and the end users engaging with the products or services provided by those business users. With regard to personal data, the gatekeeper shall provide for such access to, and use of, personal data only where the data are directly connected with the use effectuated by the end users in respect of the products or services offered by the relevant business user through the relevant core platform service, and when the end users opt in to such sharing by giving their consent.

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11. The gatekeeper shall provide to any third-party undertaking providing online search engines, at its request, with access on fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on its online search engines. Any such query, click and view data that constitutes personal data shall be anonymised.

12. The gatekeeper shall apply fair, reasonable, and non-discriminatory general conditions of access for business users to its software application stores, online search engines and online social networking services listed in the designation decision pursuant to Article 3(9).

For that purpose, the gatekeeper shall publish general conditions of access, including an alternative dispute settlement mechanism.

The Commission shall assess whether the published general conditions of access comply with this paragraph.

13. The gatekeeper shall not have general conditions for terminating the provision of a core platform service that are disproportionate. The gatekeeper shall ensure that the conditions of termination can be exercised without undue difficulty.

Article 7

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

1. Where a gatekeeper provides number-independent interpersonal communications services that are listed in the designation decision pursuant to Article 3(9), it shall make the basic functionalities of its number-independent interpersonal communications services interoperable with the number-independent interpersonal communications services of another provider offering or intending to offer such services in the Union, by providing the necessary technical interfaces or similar solutions that facilitate interoperability, upon request, and free of charge.

2. The gatekeeper shall make at least the following basic functionalities referred to in paragraph 1 interoperable where the gatekeeper itself provides those functionalities to its own end users:

- (a) following the listing in the designation decision pursuant to Article 3(9):
 - (i) end-to-end text messaging between two individual end users;
 - (ii) sharing of images, voice messages, videos and other attached files in end to end communication between two individual end users;

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- (b) within 2 years from the designation:
 - (i) end-to-end text messaging within groups of individual end users;
 - (ii) sharing of images, voice messages, videos and other attached files in end-to-end communication between a group chat and an individual end user;
 - (c) within 4 years from the designation:
 - (i) end-to-end voice calls between two individual end users;
 - (ii) end-to-end video calls between two individual end users;
 - (iii) end-to-end voice calls between a group chat and an individual end user;
 - (iv) end-to-end video calls between a group chat and an individual end user.
3. The level of security, including the end-to-end encryption, where applicable, that the gatekeeper provides to its own end users shall be preserved across the interoperable services.
4. The gatekeeper shall publish a reference offer laying down the technical details and general terms and conditions of interoperability with its number-independent interpersonal communications services, including the necessary details on the level of security and end-to-end encryption. The gatekeeper shall publish that reference offer within the period laid down in Article 3(10) and update it where necessary.
5. Following the publication of the reference offer pursuant to paragraph 4, any provider of number-independent interpersonal communications services offering or intending to offer such services in the Union may request interoperability with the number-independent interpersonal communications services provided by the gatekeeper. Such a request may cover some or all of the basic functionalities listed in paragraph 2. The gatekeeper shall comply with any reasonable request for interoperability within 3 months after receiving that request by rendering the requested basic functionalities operational.
6. The Commission may, exceptionally, upon a reasoned request by the gatekeeper, extend the time limits for compliance under paragraph 2 or 5 where the gatekeeper demonstrates that this is necessary to ensure effective interoperability and to maintain the necessary level of security, including end-to-end encryption, where applicable.
7. The end users of the number-independent interpersonal communications services of the gatekeeper and of the requesting provider of number-independent interpersonal communications services shall remain free to decide whether to make use of the interoperable basic functionalities that may be provided by the gatekeeper pursuant to paragraph 1.

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8. The gatekeeper shall collect and exchange with the provider of number-independent interpersonal communications services that makes a request for interoperability only the personal data of end users that is strictly necessary to provide effective interoperability. Any such collection and exchange of the personal data of end users shall fully comply with Regulation (EU) 2016/679 and Directive 2002/58/EC.

9. The gatekeeper shall not be prevented from taking measures to ensure that third-party providers of number-independent interpersonal communications services requesting interoperability do not endanger the integrity, security and privacy of its services, provided that such measures are strictly necessary and proportionate and are duly justified by the gatekeeper.

*Article 8***Compliance with obligations for gatekeepers**

1. The gatekeeper shall ensure and demonstrate compliance with the obligations laid down in Articles 5, 6 and 7 of this Regulation. The measures implemented by the gatekeeper to ensure compliance with those Articles shall be effective in achieving the objectives of this Regulation and of the relevant obligation. The gatekeeper shall ensure that the implementation of those measures complies with applicable law, in particular Regulation (EU) 2016/679, Directive 2002/58/EC, legislation on cyber security, consumer protection, product safety, as well as with the accessibility requirements.

2. The Commission may, on its own initiative or at the request of a gatekeeper pursuant to paragraph 3 of this Article, open proceedings pursuant to Article 20.

The Commission may adopt an implementing act, specifying the measures that the gatekeeper concerned is to implement in order to effectively comply with the obligations laid down in Articles 6 and 7. That implementing act shall be adopted within 6 months from the opening of proceedings pursuant to Article 20 in accordance with the advisory procedure referred to in Article 50(2).

When opening proceedings on its own initiative for circumvention pursuant to Article 13, such measures may concern the obligations laid down in Articles 5, 6 and 7.

3. A gatekeeper may request the Commission to engage in a process to determine whether the measures that that gatekeeper intends to implement or has implemented to ensure compliance with Articles 6 and 7 are effective in achieving the objective of the relevant obligation in the specific circumstances of the gatekeeper. The Commission shall have discretion in deciding whether to engage in such a process, respecting the principles of equal treatment, proportionality and good administration.

In its request, the gatekeeper shall provide a reasoned submission to explain the measures that it intends to implement or has implemented. The gatekeeper shall furthermore provide a non-confidential version of its reasoned submission that may be shared with third parties pursuant to paragraph 6.

4. Paragraphs 2 and 3 of this Article are without prejudice to the powers of the Commission under Articles 29, 30 and 31.

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5. With a view of adopting the decision under paragraph 2, the Commission shall communicate its preliminary findings to the gatekeeper within 3 months from the opening of the proceedings under Article 20. In the preliminary findings, the Commission shall explain the measures that it is considering taking or that it considers the gatekeeper concerned should take in order to effectively address the preliminary findings.

6. In order to effectively enable interested third parties to provide comments, the Commission shall, when communicating its preliminary findings to the gatekeeper pursuant to paragraph 5 or as soon as possible thereafter, publish a non-confidential summary of the case and the measures that it is considering taking or that it considers the gatekeeper concerned should take. The Commission shall specify a reasonable timeframe within which such comments are to be provided.

7. In specifying the measures under paragraph 2, the Commission shall ensure that the measures are effective in achieving the objectives of this Regulation and the relevant obligation, and proportionate in the specific circumstances of the gatekeeper and the relevant service.

8. For the purposes of specifying the obligations under Article 6(11) and (12), the Commission shall also assess whether the intended or implemented measures ensure that there is no remaining imbalance of rights and obligations on business users and that the measures do not themselves confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users.

9. In respect of proceedings pursuant to paragraph 2, the Commission may, upon request or on its own initiative, decide to reopen them where:

- (a) there has been a material change in any of the facts on which the decision was based; or
- (b) the decision was based on incomplete, incorrect or misleading information; or
- (c) the measures as specified in the decision are not effective.

Article 9

Suspension

1. Where the gatekeeper demonstrates in a reasoned request that compliance with a specific obligation laid down in Article 5, 6 or 7 for a core platform service listed in the designation decision pursuant to Article 3(9) would endanger, due to exceptional circumstances beyond the gatekeeper's control, the economic viability of its operation in the Union, the Commission may adopt an implementing act setting out its decision to exceptionally suspend, in whole or in part, the specific obligation referred to in that reasoned request ('the suspension decision'). In that implementing act, the Commission shall substantiate its suspension decision by identifying the exceptional circumstances justifying the suspension. That implementing act shall be limited to the extent and the duration necessary to address such threat to the gatekeeper's viability. The Commission shall aim to adopt that implementing act without delay and at the latest 3 months following receipt of a complete reasoned request. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

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2. Where suspension is granted pursuant to paragraph 1, the Commission shall review its suspension decision every year, unless a shorter interval is specified in that decision. Following such a review the Commission shall either wholly or partly lift the suspension, or decide that the conditions in paragraph 1 continue to be met.

3. In cases of urgency, the Commission may, acting on a reasoned request by a gatekeeper, provisionally suspend the application of a specific obligation referred to in paragraph 1 to one or more individual core platform services already prior to the decision pursuant to that paragraph. Such a request may be made and granted at any time pending the assessment of the Commission pursuant to paragraph 1.

4. In assessing the request referred to in paragraphs 1 and 3, the Commission shall take into account, in particular, the impact of the compliance with the specific obligation on the economic viability of the operation of the gatekeeper in the Union as well as on third parties, in particular SMEs and consumers. The suspension may be made subject to conditions and obligations to be defined by the Commission in order to ensure a fair balance between those interests and the objectives of this Regulation.

*Article 10***Exemption for grounds of public health and public security**

1. The Commission may, acting on a reasoned request by a gatekeeper or on its own initiative, adopt an implementing act setting out its decision, to exempt that gatekeeper, in whole or in part, from a specific obligation laid down in Article 5, 6 or 7 in relation to a core platform service listed in the designation decision pursuant to Article 3 (9), where such exemption is justified on the grounds set out in paragraph 3 of this Article ('the exemption decision'). The Commission shall adopt the exemption decision within 3 months after receiving a complete reasoned request and shall provide a reasoned statement explaining the grounds for the exemption. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

2. Where an exemption is granted pursuant to paragraph 1, the Commission shall review its exemption decision if the ground for the exemption no longer exists or at least every year. Following such a review, the Commission shall either wholly or partially lift the exemption, or decide that the conditions of paragraph 1 continue to be met.

3. An exemption pursuant to paragraph 1 may only be granted on grounds of public health or public security.

4. In cases of urgency, the Commission may, acting on a reasoned request by a gatekeeper or on its own initiative, provisionally suspend the application of a specific obligation referred to in paragraph 1 to one or more individual core platform services already prior to the decision pursuant to that paragraph. Such a request may be made and granted at any time pending the assessment of the Commission pursuant to paragraph 1.

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5. In assessing the request referred to in paragraphs 1 and 4, the Commission shall take into account, in particular, the impact of the compliance with the specific obligation on the grounds in paragraph 3, as well as the effects on the gatekeeper concerned and on third parties. The Commission may subject the suspension to conditions and obligations in order to ensure a fair balance between the goals pursued by the grounds in paragraph 3 and the objectives of this Regulation.

*Article 11***Reporting**

1. Within 6 months after its designation pursuant to Article 3, and in accordance with Article 3(10), the gatekeeper shall provide the Commission with a report describing in a detailed and transparent manner the measures it has implemented to ensure compliance with the obligations laid down in Articles 5, 6 and 7.

2. Within the deadline referred to in paragraph 1, the gatekeeper shall publish and provide the Commission with a non-confidential summary of that report.

The gatekeeper shall update that report and that non-confidential summary at least annually.

The Commission shall make a link to that non-confidential summary available on its website.

*Article 12***Updating obligations for gatekeepers**

1. The Commission is empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation with regard to the obligations laid down in Articles 5 and 6. Those delegated acts shall be based on a market investigation pursuant to Article 19 that has identified the need to keep those obligations up to date in order to address practices that limit the contestability of core platform services or that are unfair in the same way as the practices addressed by the obligations laid down in Articles 5 and 6.

2. The scope of a delegated act adopted in accordance with paragraph 1 shall be limited to:

- (a) extending an obligation that applies only in relation to certain core platform services, to other core platform services listed in Article 2, point (2);
- (b) extending an obligation that benefits certain business users or end users so that it benefits other business users or end users;
- (c) specifying the manner in which the obligations laid down in Articles 5 and 6 are to be performed by gatekeepers in order to ensure effective compliance with those obligations;
- (d) extending an obligation that applies only in relation to certain services provided together with, or in support of, core platform services to other services provided together with, or in support of, core platform services;

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- (e) extending an obligation that applies only in relation to certain types of data to apply in relation to other types of data;
- (f) adding further conditions where an obligation imposes certain conditions on the behaviour of a gatekeeper; or
- (g) applying an obligation that governs the relationship between several core platform services of the gatekeeper to the relationship between a core platform service and other services of the gatekeeper.

3. The Commission is empowered to adopt delegated acts in accordance with Article 49 to amend this Regulation with regard to the list of basic functionalities identified in Article 7(2), by adding or removing functionalities of number-independent interpersonal communications services.

Those delegated acts shall be based on a market investigation pursuant to Article 19 that has identified the need to keep those obligations up to date in order to address practices that limit the contestability of core platform services or that are unfair in the same way as the practices addressed by the obligations laid down in Article 7.

4. The Commission is empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation in respect of the obligations in Article 7 by specifying the manner in which those obligations are to be performed in order to ensure effective compliance with those obligations. Those delegated acts shall be based on a market investigation pursuant to Article 19, which has identified the need to keep those obligations up to date in order to address practices that limit the contestability of core platform services or that are unfair in the same way as the practices addressed by the obligations laid down in Article 7.

5. A practice as referred to in paragraphs 1, 3 and 4 shall be considered to limit the contestability of core platform services or to be unfair where:

- (a) that practice is engaged in by gatekeepers and is capable of impeding innovation and limiting choice for business users and end users because it:
 - (i) affects or risks affecting the contestability of a core platform service or other services in the digital sector on a lasting basis due to the creation or strengthening of barriers to entry for other undertakings or to expand as providers of a core platform service or other services in the digital sector; or
 - (ii) prevents other operators from having the same access to a key input as the gatekeeper; or
- (b) there is an imbalance between the rights and obligations of business users and the gatekeeper obtains an advantage from business users that is disproportionate to the service provided by that gatekeeper to those business users.

▼B*Article 13***Anti-circumvention**

1. An undertaking providing core platform services shall not segment, divide, subdivide, fragment or split those services through contractual, commercial, technical or any other means in order to circumvent the quantitative thresholds laid down in Article 3(2). No such practice of an undertaking shall prevent the Commission from designating it as a gatekeeper pursuant to Article 3(4).

2. The Commission may, when it suspects that an undertaking providing core platform services is engaged in a practice laid down in paragraph 1, require from that undertaking any information that it deems necessary to determine whether that undertaking has engaged in such a practice.

3. The gatekeeper shall ensure that the obligations of Articles 5, 6 and 7 are fully and effectively complied with.

4. The gatekeeper shall not engage in any behaviour that undermines effective compliance with the obligations of Articles 5, 6 and 7 regardless of whether that behaviour is of a contractual, commercial or technical nature, or of any other nature, or consists in the use of behavioural techniques or interface design.

5. Where consent for collecting, processing, cross-using and sharing of personal data is required to ensure compliance with this Regulation, a gatekeeper shall take the necessary steps either to enable business users to directly obtain the required consent to their processing, where that consent is required under Regulation (EU) 2016/679 or Directive 2002/58/EC, or to comply with Union data protection and privacy rules and principles in other ways, including by providing business users with duly anonymised data where appropriate. The gatekeeper shall not make the obtaining of that consent by the business user more burdensome than for its own services.

6. The gatekeeper shall not degrade the conditions or quality of any of the core platform services provided to business users or end users who avail themselves of the rights or choices laid down in Articles 5, 6 and 7, or make the exercise of those rights or choices unduly difficult, including by offering choices to the end-user in a non-neutral manner, or by subverting end users' or business users' autonomy, decision-making, or free choice via the structure, design, function or manner of operation of a user interface or a part thereof.

7. Where the gatekeeper circumvents or attempts to circumvent any of the obligations in Article 5, 6, or 7 in a manner described in paragraphs 4, 5 and 6 of this Article, the Commission may open proceedings pursuant to Article 20 and adopt an implementing act referred to in Article 8(2) in order to specify the measures that the gatekeeper is to implement.

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8. Paragraph 7 of this Article is without prejudice to the powers of the Commission under Articles 29, 30 and 31.

*Article 14***Obligation to inform about concentrations**

1. A gatekeeper shall inform the Commission of any intended concentration within the meaning of Article 3 of Regulation (EC) No 139/2004, where the merging entities or the target of concentration provide core platform services or any other services in the digital sector or enable the collection of data, irrespective of whether it is notifiable to the Commission under that Regulation or to a competent national competition authority under national merger rules.

A gatekeeper shall inform the Commission of such a concentration prior to its implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

2. The information provided by the gatekeeper pursuant to paragraph 1 shall at least describe the undertakings concerned by the concentration, their Union and worldwide annual turnovers, their fields of activity, including activities directly related to the concentration, and the transaction value of the agreement or an estimation thereof, along with a summary of the concentration, including its nature and rationale and a list of the Member States concerned by the concentration.

The information provided by the gatekeeper shall also describe, for any relevant core platform services, their Union annual turnovers, their numbers of yearly active business users and their numbers of monthly active end users, respectively.

3. If, following any concentration referred to in paragraph 1 of this Article, additional core platform services individually meet the thresholds in Article 3(2), point (b), the gatekeeper concerned shall inform the Commission thereof within 2 months from the implementation of the concentration and provide the Commission with the information referred to in Article 3(2).

4. The Commission shall inform the competent authorities of the Member States of any information received pursuant to paragraph 1 and publish annually the list of acquisitions of which it has been informed by gatekeepers pursuant to that paragraph.

The Commission shall take account of the legitimate interest of undertakings in the protection of their business secrets.

5. The competent authorities of the Member States may use the information received under paragraph 1 of this Article to request the Commission to examine the concentration pursuant to Article 22 of Regulation (EC) No 139/2004.

*Article 15***Obligation of an audit**

1. Within 6 months after its designation pursuant to Article 3, a gatekeeper shall submit to the Commission an independently audited description of any techniques for profiling of consumers that the gatekeeper applies to or across its core platform services listed in the designation decision pursuant to Article 3(9). The Commission shall transmit that audited description to the European Data Protection Board.

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2. The Commission may adopt an implementing act referred to in Article 46(1), point (g), to develop the methodology and procedure of the audit.

3. The gatekeeper shall make publicly available an overview of the audited description referred to in paragraph 1. In doing so, the gatekeeper shall be entitled to take account of the need to respect its business secrets. The gatekeeper shall update that description and that overview at least annually.

CHAPTER IV

MARKET INVESTIGATION

*Article 16***Opening of a market investigation**

1. When the Commission intends to carry out a market investigation with a view to the possible adoption of decisions pursuant to Articles 17, 18 and 19 it shall adopt a decision opening a market investigation.

2. Notwithstanding paragraph 1, the Commission may exercise its investigative powers under this Regulation before opening a market investigation pursuant to that paragraph.

3. The decision referred to in paragraph 1 shall specify:

- (a) the date of opening of the market investigation;
- (b) the description of the issue to which the market investigation relates to;
- (c) the purpose of the market investigation.

4. The Commission may reopen a market investigation that it has closed where:

- (a) there has been a material change in any of the facts on which a decision adopted pursuant to Article 17, 18 or 19 was based; or
- (b) the decision adopted pursuant to Article 17, 18 or 19 was based on incomplete, incorrect or misleading information.

5. The Commission may ask one or more national competent authorities to assist it in its market investigation.

*Article 17***Market investigation for designating gatekeepers**

1. The Commission may conduct a market investigation for the purpose of examining whether an undertaking providing core platform services should be designated as a gatekeeper pursuant to Article 3(8), or in order to identify the core platform services to be listed in the designation decision pursuant to Article 3(9). The Commission shall endeavour to conclude its market investigation within 12 months from the date referred to in Article 16(3), point (a). In order to conclude its market investigation, the Commission shall adopt an implementing act setting out its decision. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

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2. In the course of a market investigation pursuant to paragraph 1 of this Article, the Commission shall endeavour to communicate its preliminary findings to the undertaking providing core platform services concerned within 6 months from the date referred to in Article 16(3), point (a). In the preliminary findings, the Commission shall explain whether it considers, on a provisional basis, that it is appropriate for that undertaking to be designated as a gatekeeper pursuant to Article 3(8), and for the relevant core platform services to be listed pursuant to Article 3(9).

3. Where the undertaking providing core platform services satisfies the thresholds set out in Article 3(2), but has presented sufficiently substantiated arguments in accordance with Article 3(5) that have manifestly called into question the presumption in Article 3(2), the Commission shall endeavour to conclude the market investigation within 5 months from the date referred to in Article 16(3), point (a).

In such a case, the Commission shall endeavour to communicate its preliminary findings pursuant to paragraph 2 of this Article to the undertaking concerned within 3 months from the date referred to in Article 16(3), point (a).

4. When the Commission, pursuant to Article 3(8), designates as a gatekeeper an undertaking providing core platform services that does not yet enjoy an entrenched and durable position in its operations, but which will foreseeably enjoy such a position in the near future, it may declare applicable to that gatekeeper only one or more of the obligations laid down in Article 5(3) to (6) and Article 6(4), (7), (9), (10) and (13), as specified in the designation decision. The Commission shall only declare applicable those obligations that are appropriate and necessary to prevent the gatekeeper concerned from achieving, by unfair means, an entrenched and durable position in its operations. The Commission shall review such a designation in accordance with the procedure laid down in Article 4.

*Article 18***Market investigation into systematic non-compliance**

1. The Commission may conduct a market investigation for the purpose of examining whether a gatekeeper has engaged in systematic non-compliance. The Commission shall conclude that market investigation within 12 months from the date referred to in Article 16(3), point (a). Where the market investigation shows that a gatekeeper has systematically infringed one or more of the obligations laid down in Article 5, 6 or 7 and has maintained, strengthened or extended its gatekeeper position in relation to the requirements set out in Article 3(1), the Commission may adopt an implementing act imposing on such gatekeeper any behavioural or structural remedies which are proportionate and necessary to ensure effective compliance with this Regulation. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

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2. The remedy imposed in accordance with paragraph 1 of this Article may include, to the extent that such remedy is proportionate and necessary in order to maintain or restore fairness and contestability as affected by the systematic non-compliance, the prohibition, during a limited period, for the gatekeeper to enter into a concentration within the meaning of Article 3 of Regulation (EC) No 139/2004 regarding the core platform services or the other services provided in the digital sector or enabling the collection of data that are affected by the systematic non-compliance.

3. A gatekeeper shall be deemed to have engaged in systematic non-compliance with the obligations laid down in Articles 5, 6 and 7, where the Commission has issued at least three non-compliance decisions pursuant to Article 29 against a gatekeeper in relation to any of its core platform services within a period of 8 years prior to the adoption of the decision opening a market investigation in view of the possible adoption of a decision pursuant to this Article.

4. The Commission shall communicate its preliminary findings to the gatekeeper concerned within 6 months from the date referred to in Article 16(3), point (a). In its preliminary findings, the Commission shall explain whether it preliminarily considers that the conditions of paragraph 1 of this Article are met and which remedy or remedies it preliminarily considers necessary and proportionate.

5. In order to enable interested third parties to effectively provide comments, the Commission shall, at the same time as communicating its preliminary findings to the gatekeeper pursuant to paragraph 4 or as soon as possible thereafter, publish a non-confidential summary of the case and the remedies that it is considering imposing. The Commission shall specify a reasonable timeframe within which such comments are to be provided.

6. Where the Commission intends to adopt a decision pursuant to paragraph 1 of this Article by making commitments offered by the gatekeeper pursuant to Article 25 binding, it shall publish a non-confidential summary of the case and the main content of the commitments. Interested third parties may submit their comments within a reasonable timeframe which shall be set by the Commission.

7. In the course of the market investigation, the Commission may extend its duration where such extension is justified on objective grounds and proportionate. The extension may apply to the deadline by which the Commission has to issue its preliminary findings, or to the deadline for adoption of the final decision. The total duration of any extension or extensions pursuant to this paragraph shall not exceed 6 months.

8. In order to ensure effective compliance by the gatekeeper with its obligations laid down in Articles 5, 6 and 7, the Commission shall regularly review the remedies that it imposes in accordance with paragraphs 1 and 2 of this Article. The Commission shall be entitled to modify those remedies if, following a new market investigation, it finds that they are not effective.



Article 19

Market investigation into new services and new practices

1. The Commission may conduct a market investigation for the purpose of examining whether one or more services within the digital sector should be added to the list of core platform services laid down in Article 2, point (2) or for the purpose of detecting practices that limit the contestability of core platform services or that are unfair and which are not effectively addressed by this Regulation. In its assessment, the Commission shall take into account any relevant findings of proceedings under Articles 101 and 102 TFEU concerning digital markets as well as any other relevant developments.

2. The Commission may, when conducting a market investigation pursuant to paragraph 1, consult third parties, including business users and end users of services within the digital sector that are being investigated and business users and end users who are subject to practices under investigation.

3. The Commission shall publish its findings in a report within 18 months from the date referred to in Article 16(3), point (a).

That report shall be submitted to the European Parliament and to the Council and, where appropriate, shall be accompanied by:

- (a) a legislative proposal to amend this Regulation in order to include additional services within the digital sector in the list of core platform services laid down in Article 2, point (2), or to include new obligations in Chapter III; or
- (b) a draft delegated act supplementing this Regulation with regard to the obligations laid down in Articles 5 and 6, or a draft delegated act amending or supplementing this Regulation with regard to the obligations laid down in Article 7, as provided for in Article 12.

Where appropriate, the legislative proposal to amend this Regulation under point (a) of the second subparagraph may also propose to remove existing services from the list of core platform services laid down in Article 2, point (2), or to remove existing obligations from Article 5, 6 or 7.

CHAPTER V

INVESTIGATIVE, ENFORCEMENT AND MONITORING POWERS

Article 20

Opening of proceedings

1. Where the Commission intends to open proceedings with a view to the possible adoption of decisions pursuant to Articles 8, 29 and 30, it shall adopt a decision opening a proceeding.

2. Notwithstanding paragraph 1, the Commission may exercise its investigative powers under this Regulation before opening proceedings pursuant to that paragraph.

*Article 21***Requests for information**

1. In order to carry out its duties under this Regulation, the Commission may, by simple request or by decision, require from undertakings and associations of undertakings to provide all necessary information. The Commission may also, by simple request or by decision, require access to any data and algorithms of undertakings and information about testing, as well as requesting explanations of them.

2. When sending a simple request for information to an undertaking or association of undertakings, the Commission shall state the legal basis and purpose of the request, specify what information is required and fix the time limit within which the information is to be provided, as well as the fines provided for in Article 30 applicable for supplying incomplete, incorrect or misleading information or explanations.

3. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state the legal basis and purpose of the request, specify what information is required and fix the time limit within which the information is to be provided. Where the Commission requires undertakings to provide access to any data, algorithms and information about testing, it shall state the purpose of the request and fix the time -limit within which it is to be provided. It shall also indicate the fines provided for in Article 30 and indicate or impose the periodic penalty payments provided for in Article 31. It shall further indicate the right to have the decision reviewed by the Court of Justice.

4. The undertakings or associations of undertakings or their representatives shall supply the information requested on behalf of the undertaking or the association of undertakings concerned. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. At the request of the Commission, the competent authorities of the Member States shall provide the Commission with all necessary information in their possession to carry out the duties assigned to it by this Regulation.

*Article 22***Power to carry out interviews and take statements**

1. In order to carry out its duties under this Regulation, the Commission may interview any natural or legal person which consents to being interviewed, for the purpose of collecting information, relating to the subject-matter of an investigation. The Commission shall be entitled to record such interviews by any technical means.

2. Where an interview pursuant to paragraph 1 of this Article is conducted on the premises of an undertaking, the Commission shall inform the national competent authority of the Member State that is enforcing the rules referred to in Article 1(6) and in whose territory the interview takes place thereof. If that authority so requests, its officials may assist the officials and other accompanying persons authorised by the Commission to conduct the interview.

*Article 23***Powers to conduct inspections**

1. In order to carry out its duties under this Regulation, the Commission may conduct all necessary inspections of an undertaking or association of undertakings.

2. The officials and other accompanying persons authorised by the Commission to conduct an inspection are empowered to:

- (a) enter any premises, land and means of transport of undertakings and associations of undertakings;
- (b) examine the books and other records related to the business, irrespective of the medium on which they are stored;
- (c) take or obtain in any form copies of or extracts from such books or records;
- (d) require the undertaking or association of undertakings to provide access to and explanations on its organisation, functioning, IT system, algorithms, data-handling and business practices and to record or document the explanations given by any technical means;
- (e) seal any business premises and books or records for the duration of, and to the extent necessary for, the inspection;
- (f) ask any representative or member of staff of the undertaking or association of undertakings for explanations of facts or documents relating to the subject-matter and purpose of the inspection, and to record the answers by any technical means.

3. To carry out inspections, the Commission may request the assistance of auditors or experts appointed by the Commission pursuant to Article 26(2), as well as the assistance of the national competent authority of the Member State, enforcing the rules referred to in Article 1(6) in whose territory the inspection is to be conducted.

4. During inspections the Commission, auditors or experts appointed by it and the national competent authority of the Member State, enforcing the rules referred to in Article 1(6) in whose territory the inspection is to be conducted may require the undertaking or association of undertakings to provide access to and explanations on its organisation, functioning, IT system, algorithms, data-handling and business conducts. The Commission and auditors or experts appointed by it and the national competent authority of the Member State, enforcing the rules referred to in Article 1(6) in whose territory the inspection is to be conducted may address questions to any representative or member of staff.

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5. The officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the fines provided for in Article 30 applicable in the event that the production of the required books or other records related to the business is incomplete or where the answers to questions asked under paragraphs 2 and 4 of this Article are incorrect or misleading. In good time before the inspection, the Commission shall give notice of the inspection to the national competent authority of the Member State enforcing the rules referred to in Article 1(6) in whose territory it is to be conducted.

6. Undertakings or associations of undertakings are required to submit to an inspection ordered by a Commission decision. That decision shall specify the subject matter and purpose of the inspection, set the date on which it is to begin and indicate the fines and periodic penalty payments provided for in Articles 30 and 31 respectively, and the right to have that decision reviewed by the Court of Justice.

7. Officials of, and the persons authorised or appointed by, the national competent authority of the Member State enforcing the rules referred to in Article 1(6) in whose territory the inspection is to be conducted shall, at the request of that authority or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers set out in paragraphs 2 and 4 of this Article.

8. Where the officials and other accompanying persons authorised by the Commission find that an undertaking or association of undertakings opposes an inspection ordered pursuant to this Article, the Member State concerned shall afford them the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their inspection.

9. If, according to national rules, the assistance provided for in paragraph 8 of this Article requires authorisation from a judicial authority, the Commission or the national competent authority of the Member State enforcing the rules referred to in Article 1(6) or officials authorised by those authorities shall apply for it. Such authorisation may also be applied for as a precautionary measure.

10. Where authorisation referred to in paragraph 9 of this Article is applied for, the national judicial authority shall verify that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the Commission, directly or through the national competent authority of the Member State, enforcing the rules referred to in Article 1(6), for detailed explanations in particular on the grounds the Commission has for suspecting infringement of this Regulation, as well as on the seriousness of the suspected infringement and on the nature of the involvement of the undertaking concerned. However, the national judicial authority may not call into question the necessity of the inspection nor demand that it be provided with the information in the file of the Commission. The lawfulness of the Commission decision shall be subject to review only by the Court of Justice.



Article 24

Interim measures

In case of urgency due to the risk of serious and irreparable damage for business users or end users of gatekeepers, the Commission may adopt an implementing act ordering interim measures against a gatekeeper on the basis of a *prima facie* finding of an infringement of Article 5, 6 or 7. That implementing act shall be adopted only in the context of proceedings opened with a view to the possible adoption of a non-compliance decision pursuant to Article 29(1). It shall apply only for a specified period of time and may be renewed in so far this is necessary and appropriate. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

Article 25

Commitments

1. If, during proceedings under Article 18, the gatekeeper concerned offers commitments for the relevant core platform services to ensure compliance with the obligations laid down in Articles 5, 6 and 7 the Commission may adopt an implementing act making those commitments binding on that gatekeeper and declare that there are no further grounds for action. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

2. The Commission may, upon request or on its own initiative, reopen by decision the relevant proceedings, where:

- (a) there has been a material change in any of the facts on which the decision was based;
- (b) the gatekeeper concerned acts contrary to its commitments;
- (c) the decision was based on incomplete, incorrect or misleading information provided by the parties;
- (d) the commitments are not effective.

3. If the Commission considers that the commitments submitted by the gatekeeper concerned cannot ensure effective compliance with the obligations laid down in Articles 5, 6 and 7, it shall explain the reasons for not making those commitments binding in the decision concluding the relevant proceedings.

Article 26

Monitoring of obligations and measures

1. The Commission shall take the necessary actions to monitor the effective implementation and compliance with the obligations laid down in Articles 5, 6 and 7 and the decisions taken pursuant to Articles 8, 18, 24, 25 and 29. Those actions may include, in particular, the imposition of an obligation on the gatekeeper to retain all documents deemed to be relevant to assess the implementation of, and compliance with, those obligations and decisions.

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2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors, as well as the appointment of officials from national competent authorities of the Member States, to assist the Commission to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission.

*Article 27***Information by third parties**

1. Any third party, including business users, competitors or end-users of the core platform services listed in the designation decision pursuant to Article 3(9), as well as their representatives, may inform the national competent authority of the Member State, enforcing the rules referred to in Article 1(6), or the Commission directly, about any practice or behaviour by gatekeepers that falls within the scope of this Regulation.

2. The national competent authority of the Member State, enforcing the rules referred to in Article 1(6), and the Commission shall have full discretion as regards the appropriate measures and are under no obligation to follow-up on the information received.

3. Where the national competent authority of the Member State, enforcing the rules referred to in Article 1(6), determines, based on the information received pursuant to paragraph 1 of this Article, that there may be an issue of non-compliance with this Regulation, it shall transfer that information to the Commission.

*Article 28***Compliance function**

1. Gatekeepers shall introduce a compliance function, which is independent from the operational functions of the gatekeeper and composed of one or more compliance officers, including the head of the compliance function.

2. The gatekeeper shall ensure that the compliance function referred to in paragraph 1 has sufficient authority, stature and resources, as well as access to the management body of the gatekeeper to monitor the compliance of the gatekeeper with this Regulation.

3. The management body of the gatekeeper shall ensure that compliance officers appointed pursuant to paragraph 1 have the professional qualifications, knowledge, experience and ability necessary to fulfil the tasks referred to in paragraph 5.

The management body of the gatekeeper shall also ensure that such head of the compliance function is an independent senior manager with distinct responsibility for the compliance function.

4. The head of the compliance function shall report directly to the management body of the gatekeeper and may raise concerns and warn that body where risks of non-compliance with this Regulation arise, without prejudice to the responsibilities of the management body in its supervisory and managerial functions.

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The head of the compliance function shall not be removed without prior approval of the management body of the gatekeeper.

5. Compliance officers appointed by the gatekeeper pursuant to paragraph 1 shall have the following tasks:

- (a) organising, monitoring and supervising the measures and activities of the gatekeepers that aim to ensure compliance with this Regulation;
- (b) informing and advising the management and employees of the gatekeeper on compliance with this Regulation;
- (c) where applicable, monitoring compliance with commitments made binding pursuant to Article 25, without prejudice to the Commission being able to appoint independent external experts pursuant to Article 26(2);
- (d) cooperating with the Commission for the purpose of this Regulation.

6. Gatekeepers shall communicate the name and contact details of the head of the compliance function to the Commission.

7. The management body of the gatekeeper shall define, oversee and be accountable for the implementation of the governance arrangements of the gatekeeper that ensure the independence of the compliance function, including the division of responsibilities in the organisation of the gatekeeper and the prevention of conflicts of interest.

8. The management body shall approve and review periodically, at least once a year, the strategies and policies for taking up, managing and monitoring the compliance with this Regulation.

9. The management body shall devote sufficient time to the management and monitoring of compliance with this Regulation. It shall actively participate in decisions relating to the management and enforcement of this Regulation and ensure that adequate resources are allocated to it.

Article 29

Non-compliance

1. The Commission shall adopt an implementing act setting out its finding of non-compliance ('the non-compliance decision') where it finds that a gatekeeper does not comply with one or more of the following:

- (a) any of the obligations laid down in Article 5, 6 or 7;
- (b) measures specified by the Commission in a decision adopted pursuant to Article 8(2);
- (c) remedies imposed pursuant to Article 18(1);
- (d) interim measures ordered pursuant to Article 24; or
- (e) commitments made legally binding pursuant to Article 25.

That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

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2. The Commission shall endeavour to adopt its non-compliance decision within 12 months from the opening of proceedings pursuant to Article 20.
3. Before adopting the non-compliance decision, the Commission shall communicate its preliminary findings to the gatekeeper concerned. In those preliminary findings, the Commission shall explain the measures it is considering taking or that it considers that the gatekeeper should take in order to effectively address the preliminary findings.
4. Where it intends to adopt a non-compliance decision, the Commission may consult third parties.
5. In the non-compliance decision, the Commission shall order the gatekeeper to cease and desist with the non-compliance within an appropriate deadline and to provide explanations on how it plans to comply with that decision.
6. The gatekeeper shall provide the Commission with the description of the measures that it has taken to ensure compliance with the non-compliance decision.
7. Where the Commission decides not to adopt a non-compliance decision, it shall close the proceedings by a decision.

*Article 30***Fines**

1. In the non-compliance decision, the Commission may impose on a gatekeeper fines not exceeding 10 % of its total worldwide turnover in the preceding financial year where it finds that the gatekeeper, intentionally or negligently, fails to comply with:
 - (a) any of the obligations laid down in Articles 5, 6 and 7;
 - (b) measures specified by the Commission in a decision adopted pursuant to Article 8(2);
 - (c) remedies imposed pursuant to Article 18(1);
 - (d) interim measures ordered pursuant to Article 24; or
 - (e) commitments made legally binding pursuant to Article 25.
2. Notwithstanding paragraph 1 of this Article, in the non-compliance decision the Commission may impose on a gatekeeper fines up to 20 % of its total worldwide turnover in the preceding financial year where it finds that a gatekeeper has committed the same or a similar infringement of an obligation laid down in Article 5, 6 or 7 in relation to the same core platform service as it was found to have committed in a non-compliance decision adopted in the 8 preceding years.
3. The Commission may adopt a decision, imposing on undertakings, including gatekeepers where applicable, and associations of undertakings, fines not exceeding 1 % of their total worldwide turnover in the preceding financial year where they intentionally or negligently:

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- (a) fail to provide within the time limit information that is required for assessing their designation as gatekeepers pursuant to Article 3 or supply incorrect, incomplete or misleading information;
- (b) fail to comply with the obligation to notify the Commission according to Article 3(3);
- (c) fail to notify information or supply incorrect, incomplete or misleading information that is required pursuant to Article 14;
- (d) fail to submit the description or supply incorrect, incomplete or misleading information that is required pursuant to Article 15;
- (e) fail to provide access to data, algorithms or information about testing in response to a request made pursuant to Article 21(3);
- (f) fail to supply the information requested within the time limit fixed pursuant to Article 21(3) or supply incorrect, incomplete or misleading information or explanations that are requested pursuant to Article 21 or given in an interview pursuant to Article 22;
- (g) fail to rectify within a time limit set by the Commission, incorrect, incomplete or misleading information given by a representative or a member of staff, or fail or refuse to provide complete information on facts relating to the subject-matter and purpose of an inspection, pursuant to Article 23;
- (h) refuse to submit to an inspection pursuant to Article 23;
- (i) fail to comply with the obligations imposed by the Commission pursuant to Article 26;
- (j) fail to introduce a compliance function in accordance with Article 28; or
- (k) fail to comply with the conditions for access to the Commission's file pursuant to Article 34(4).

4. In fixing the amount of a fine, the Commission shall take into account the gravity, duration, recurrence, and, for fines imposed pursuant to paragraph 3, delay caused to the proceedings.

5. When a fine is imposed on an association of undertakings taking account of the worldwide turnover of its members and that association is not solvent, it shall be obliged to call for contributions from its members to cover the amount of the fine.

Where such contributions have not been made to the association of undertakings within a time limit set by the Commission, the Commission may require payment of the fine directly by any of the undertakings whose representatives were members of the decision-making bodies concerned of that association.

After having required payment in accordance with the second subparagraph, the Commission may require payment of the balance by any of the members of the association of undertakings, where necessary to ensure full payment of the fine.

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However, the Commission shall not require payment pursuant to the second or the third subparagraph from undertakings which show that they have not implemented the decision of the association of undertakings that infringed this Regulation, and either were not aware of its existence, or have actively distanced themselves from it before the Commission opened proceedings under Article 20.

The financial liability of each undertaking in respect of the payment of the fine shall not exceed 20 % of its total worldwide turnover in the preceding financial year.

*Article 31***Periodic penalty payments**

1. The Commission may adopt a decision imposing on undertakings, including gatekeepers where applicable, and associations of undertakings periodic penalty payments not exceeding 5 % of the average daily worldwide turnover in the preceding financial year per day, calculated from the date set by that decision, in order to compel them:

- (a) to comply with the measures specified by the Commission in a decision adopted pursuant to Article 8(2);
- (b) to comply with the decision pursuant to Article 18(1);
- (c) to supply correct and complete information within the time limit required by a request for information made by decision pursuant to Article 21;
- (d) to ensure access to data, algorithms and information about testing in response to a request made pursuant to Article 21(3) and to supply explanations on those as required by a decision pursuant to Article 21;
- (e) to submit to an inspection which was ordered by a decision taken pursuant to Article 23;
- (f) to comply with a decision ordering interim measures taken pursuant to Article 24;
- (g) to comply with commitments made legally binding by a decision pursuant to Article 25(1);
- (h) to comply with a decision pursuant to Article 29(1).

2. Where the undertakings, or associations of undertakings, have satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may adopt an implementing act, setting the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

*Article 32***Limitation periods for the imposition of penalties**

1. The powers conferred on the Commission by Articles 30 and 31 shall be subject to a 5 year limitation period.

2. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.

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3. Any action taken by the Commission for the purpose of a market investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement. Actions which interrupt the running of the period shall include in particular the following:

- (a) requests for information by the Commission;
- (b) written authorisations to conduct inspections issued to its officials by the Commission;
- (c) the opening of a proceeding by the Commission pursuant to Article 20.

4. Each interruption shall start time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which limitation is suspended pursuant to paragraph 5.

5. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice.

*Article 33***Limitation periods for the enforcement of penalties**

1. The power of the Commission to enforce decisions taken pursuant to Articles 30 and 31 shall be subject to a limitation period of 5 years.

2. Time shall begin to run from the day on which the decision becomes final.

3. The limitation period for the enforcement of penalties shall be interrupted:

- (a) by notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation; or
- (b) by any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine or periodic penalty payment.

4. Each interruption shall start time running afresh.

5. The limitation period for the enforcement of penalties shall be suspended for so long as:

- (a) time to pay is allowed; or
- (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice or to a decision by a national court.

*Article 34***Right to be heard and access to the file**

1. Before adopting a decision pursuant to Article 8, Article 9(1), Article 10(1), Articles 17, 18, 24, 25, 29 and 30 and Article 31(2), the Commission shall give the gatekeeper or undertaking or association of undertakings concerned the opportunity of being heard on:

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(a) preliminary findings of the Commission, including any matter to which the Commission has taken objection; and

(b) measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.

2. Gatekeepers, undertakings and associations of undertakings concerned may submit their observations to the Commission concerning the Commission's preliminary findings within a time limit set by the Commission in its preliminary findings which may not be less than 14 days.

3. The Commission shall base its decisions only on preliminary findings, including any matter to which the Commission has taken objection, on which gatekeepers, undertakings and associations of undertakings concerned have been able to comment.

4. The rights of defence of the gatekeeper, undertaking or association of undertakings concerned shall be fully respected in any proceedings. The gatekeeper, undertaking or association of undertakings concerned shall be entitled to have access to the Commission's file under terms of disclosure, subject to the legitimate interest of undertakings in the protection of their business secrets. In the case of disagreement between the parties, the Commission may adopt decisions setting out those terms of disclosure. The right of access to the file of the Commission shall not extend to confidential information and internal documents of the Commission or the competent authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the competent authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.

Article 35

Annual reporting

1. The Commission shall submit to the European Parliament and to the Council an annual report on the implementation of this Regulation and the progress made towards achieving its objectives.

2. The report referred to in paragraph 1 shall include:

(a) a summary of the Commission's activities including any adopted measures or decisions and ongoing market investigations in connection with this Regulation;

(b) the findings resulting from the monitoring of the implementation by the gatekeepers of the obligations under this Regulation;

(c) an assessment of the audited description referred to in Article 15;

(d) an overview of the cooperation between the Commission and national authorities in connection with this Regulation;

(e) an overview of the activities and tasks performed by the High Level Group of Digital Regulators, including how its recommendations as regards the enforcement of this Regulation are to be implemented.

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3. The Commission shall publish the report on its website.

*Article 36***Professional secrecy**

1. The information collected pursuant to this Regulation shall be used for the purposes of this Regulation.
2. The information collected pursuant to Article 14 shall be used for the purposes of this Regulation, Regulation (EC) No 139/2004 and national merger rules.
3. The information collected pursuant to Article 15 shall be used for the purposes of this Regulation and Regulation (EU) 2016/679.
4. Without prejudice to the exchange and to the use of information provided for the purpose of use pursuant to Articles 38, 39, 41 and 43, the Commission, the competent authorities of the Member States, their officials, servants and other persons working under the supervision of those authorities and any natural or legal person, including auditors and experts appointed pursuant to Article 26(2), shall not disclose information acquired or exchanged by them pursuant to this Regulation and of the kind covered by the obligation of professional secrecy.

*Article 37***Cooperation with national authorities**

1. The Commission and Member States shall work in close cooperation and coordinate their enforcement actions to ensure coherent, effective and complementary enforcement of available legal instruments applied to gatekeepers within the meaning of this Regulation.
2. The Commission may consult national authorities where appropriate, on any matter relating to the application of this Regulation.

*Article 38***Cooperation and coordination with national competent authorities enforcing competition rules**

1. The Commission and the national competent authorities of the Member States enforcing the rules referred to in Article 1(6) shall cooperate with each other and inform each other about their respective enforcement actions through the European Competition Network (ECN). They shall have the power to provide one another with any information regarding a matter of fact or of law, including confidential information. Where the competent authority is not a member of the ECN, the Commission shall make the necessary arrangements for cooperation and exchange of information on cases concerning the enforcement of this Regulation and the enforcement of cases referred to in Article 1(6) of such authorities. The Commission may lay down such arrangements in an implementing act as referred to in Article 46(1), point (l).

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2. Where a national competent authority of the Member States enforcing the rules referred to in Article 1(6) intends to launch an investigation on gatekeepers based on national laws referred to in Article 1(6), it shall inform the Commission in writing of the first formal investigative measure, before or immediately after the start of such measure. This information may also be made available to the national competent authorities enforcing the rules referred to in Article 1(6) of the other Member States.

3. Where a national competent authority of the Member States enforcing the rules referred to in Article 1(6) intends to impose obligations on gatekeepers based on national laws referred to in Article 1(6), it shall, no later than 30 days before its adoption, communicate the draft measure to the Commission stating the reasons for the measure. In the case of interim measures, the national competent authority of the Member States enforcing the rules referred to in Article 1(6) shall communicate to the Commission the draft measures envisaged as soon as possible, and at the latest immediately after the adoption of such measures. This information may also be made available to the national competent authorities enforcing the rules referred to in Article 1(6) of the other Member States.

4. The information mechanisms provided for in paragraphs 2 and 3 shall not apply to decisions envisaged pursuant to national merger rules.

5. Information exchanged pursuant to paragraphs 1 to 3 of this Article shall only be exchanged and used for the purpose of coordination of the enforcement of this Regulation and the rules referred to in Article 1(6).

6. The Commission may ask national competent authorities of the Member States enforcing the rules referred to in Article 1(6) to support any of its market investigations pursuant to this Regulation.

7. Where it has the competence and investigative powers to do so under national law, a national competent authority of the Member States enforcing the rules referred to in Article 1(6) may, on its own initiative, conduct an investigation into a case of possible non-compliance with Articles 5, 6 and 7 of this Regulation on its territory. Before taking a first formal investigative measure, that authority shall inform the Commission in writing.

The opening of proceedings by the Commission pursuant to Article 20 shall relieve the national competent authorities of the Member States enforcing the rules referred to in Article 1(6) of the possibility to conduct such an investigation or end it where it is already ongoing. Those authorities shall report to the Commission on the findings of such investigation in order to support the Commission in its role as sole enforcer of this Regulation.

*Article 39***Cooperation with national courts**

1. In proceedings for the application of this Regulation, national courts may ask the Commission to transmit to them information in its possession or its opinion on questions concerning the application of this Regulation.

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2. Member States shall forward to the Commission a copy of any written judgment of national courts deciding on the application of this Regulation. Such copy shall be forwarded without delay after the full written judgment is notified to the parties.

3. Where the coherent application of this Regulation so requires, the Commission, acting on its own initiative, may submit written observations to national courts. With the permission of the court in question, it may also make oral observations.

4. For the purpose of the preparation of their observations only, the Commission may request the relevant national court to transmit or ensure the transmission to the Commission of any documents necessary for the assessment of the case.

5. National courts shall not give a decision which runs counter to a decision adopted by the Commission under this Regulation. They shall also avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated under this Regulation. To that effect, the national court may assess whether it is necessary to stay its proceedings. This is without prejudice to the possibility for national courts to request a preliminary ruling under Article 267 TFEU.

*Article 40***The high-level group**

1. The Commission shall establish a high-level group for the Digital Markets Act ('the high-level group').

2. The high-level group shall be composed of the following European bodies and networks:

- (a) Body of the European Regulators for Electronic Communications;
- (b) European Data Protection Supervisor and European Data Protection Board;
- (c) European Competition Network;
- (d) Consumer Protection Cooperation Network; and
- (e) European Regulatory Group of Audiovisual Media Regulators.

3. The European bodies and networks referred to in paragraph 2 shall each have an equal number of representatives in the high-level group. The maximum number of members of the high-level group shall not exceed 30.

4. The Commission shall provide secretariat services to the high-level group in order to facilitate its work. The high-level group shall be chaired by the Commission, which shall participate in its meetings. The high-level group shall meet upon request of the Commission at least once per calendar year. The Commission shall also convene a meeting of the group when so requested by the majority of the members composing the group in order to address a specific issue.

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5. The high-level group may provide the Commission with advice and expertise in the areas falling within the competences of its members, including:

- (a) advice and recommendations within their expertise relevant for any general matter of implementation or enforcement of this Regulation; or
- (b) advice and expertise promoting a consistent regulatory approach across different regulatory instruments.

6. The high-level group may, in particular, identify and assess the current and potential interactions between this Regulation and the sector-specific rules applied by the national authorities composing the European bodies and networks referred to in paragraph 2 and submit an annual report to the Commission presenting such assessment and identifying potential trans-regulatory issues. Such report may be accompanied by recommendations aiming at converging towards consistent transdisciplinary approaches and synergies between the implementation of this Regulation and other sectoral regulations. The report shall be communicated to the European Parliament and to the Council.

7. In the context of market investigations into new services and new practices, the high-level group may provide expertise to the Commission on the need to amend, add or remove rules in this Regulation, to ensure that digital markets across the Union are contestable and fair.

Article 41

Request for a market investigation

1. Three or more Member States may request the Commission to open a market investigation pursuant to Article 17 because they consider that there are reasonable grounds to suspect that an undertaking should be designated as a gatekeeper.

2. One or more Member States may request the Commission to open a market investigation pursuant to Article 18 because they consider that there are reasonable grounds to suspect that a gatekeeper has systematically infringed one or more of the obligations laid down in Articles 5, 6 and 7 and has maintained, strengthened or extended its gatekeeper position in relation to the requirements under Article 3(1).

3. Three or more Member States may request the Commission to conduct a market investigation pursuant to Article 19 because they consider that there are reasonable grounds to suspect that:

- (a) one or more services within the digital sector should be added to the list of core platform services laid down in Article 2, point (2), or
- (b) one or more practices are not effectively addressed by this Regulation and might limit the contestability of core platform services or be unfair.

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4. Member States shall submit evidence in support of their requests pursuant to paragraphs 1, 2 and 3. For requests pursuant to paragraph 3, such evidence may include information on newly introduced offers of products, services, software or features which raise concerns of contestability or fairness, whether implemented in the context of existing core platform services or otherwise.

5. Within 4 months of receiving a request pursuant to this Article, the Commission shall examine whether there are reasonable grounds to open a market investigation pursuant to paragraph 1, 2 or 3. The Commission shall publish the results of its assessment.

*Article 42***Representative actions**

Directive (EU) 2020/1828 shall apply to the representative actions brought against infringements by gatekeepers of provisions of this Regulation that harm or may harm the collective interests of consumers.

*Article 43***Reporting of breaches and protection of reporting persons**

Directive (EU) 2019/1937 shall apply to the reporting of all breaches of this Regulation and the protection of persons reporting such breaches.

CHAPTER VI

FINAL PROVISIONS*Article 44***Publication of decisions**

1. The Commission shall publish the decisions which it takes pursuant to Articles 3 and 4, Article 8(2), Articles 9, 10, 16 to 20 and 24, Article 25(1), Articles 29, 30 and 31. Such publication shall state the names of the parties and the main content of the decision, including any penalties imposed.

2. The publication shall have regard to the legitimate interest of gatekeepers or third parties in the protection of their confidential information.

*Article 45***Review by the Court of Justice**

In accordance with Article 261 TFEU, the Court of Justice has unlimited jurisdiction to review decisions by which the Commission has imposed fines or periodic penalty payments. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

*Article 46***Implementing provisions**

1. The Commission may adopt implementing acts laying down detailed arrangements for the application of the following:

- (a) the form, content and other details of notifications and submissions pursuant to Article 3;
- (b) the form, content and other details of the technical measures that gatekeepers shall implement in order to ensure compliance with Article 5, 6 or 7;
- (c) operational and technical arrangements in view of implementing interoperability of number-independent interpersonal communications services pursuant to Article 7;
- (d) the form, content and other details of the reasoned request pursuant to Article 8(3);
- (e) the form, content and other details of the reasoned requests pursuant to Articles 9 and 10;
- (f) the form, content and other details of the regulatory reports delivered pursuant to Article 11;
- (g) the methodology and procedure for the audited description of techniques used for profiling of consumers provided for in Article 15 (1); when developing a draft implementing act for this purpose, the Commission shall consult the European Data Protection Supervisor and may consult the European Data Protection Board, civil society and other relevant experts;
- (h) the form, content and other details of notifications and submissions made pursuant to Articles 14 and 15;
- (i) the practical arrangements of the proceedings concerning the market investigations pursuant to Articles 17, 18 and 19, and proceedings pursuant to Articles 24, 25 and 29;
- (j) the practical arrangements for exercising rights to be heard provided for in Article 34;
- (k) the practical arrangements for the terms of disclosure provided for in Article 34;
- (l) the practical arrangements for the cooperation and coordination between the Commission and national authorities provided for in Articles 37 and 38; and
- (m) the practical arrangements for the calculation and extension of deadlines.

2. The implementing acts referred to in paragraph 1, points (a) to (k), and point (m) of this Article shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

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The implementing act referred to in paragraph 1, point (l), of this Article shall be adopted in accordance with the examination procedure referred to in Article 50(3).

3. Before the adoption of any implementing act pursuant to paragraph 1, the Commission shall publish a draft thereof and invite all interested parties to submit their comments within a time limit, which may not be less than one month.

*Article 47***Guidelines**

The Commission may adopt guidelines on any of the aspects of this Regulation in order to facilitate its effective implementation and enforcement.

*Article 48***Standardisation**

Where appropriate and necessary, the Commission may mandate European standardisation bodies to facilitate the implementation of the obligations set out in this Regulation by developing appropriate standards.

*Article 49***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 3(6) and (7) and Article 12(1), (3) and (4) shall be conferred on the Commission for a period of 5 years from 1 November 2022. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.

3. The delegation of power referred to in Article 3(6) and (7), and Article 12(1), (3) and (4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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6. A delegated act adopted pursuant to Article 3(6) and (7), and Article 12(1), (3) and (4) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

*Article 50***Committee procedure**

1. The Commission shall be assisted by a committee ('the Digital Markets Advisory Committee'). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

4. The Commission shall communicate the opinion of the committee to the addressee of an individual decision, together with that decision. It shall make the opinion public together with the individual decision, having regard to the legitimate interest in the protection of professional secrecy.

*Article 51***Amendment to Directive (EU) 2019/1937**

In Point J of Part I of the Annex to Directive (EU) 2019/1937, the following point is added:

'(iv) Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 21.9.2022, p. 1).'

*Article 52***Amendment to Directive (EU) 2020/1828**

In Annex I to Directive (EU) 2020/1828, the following point is added:

'(67) Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 21.9.2022, p. 1).'



Article 53

Review

1. By 3 May 2026, and subsequently every 3 years, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.
2. The evaluations shall assess whether the aims of this Regulation of ensuring contestable and fair markets have been achieved and assess the impact of this Regulation on business users, especially SMEs, and end users. Moreover, the Commission shall evaluate if the scope of Article 7 may be extended to online social networking services.
3. The evaluations shall establish whether it is required to modify rules, including regarding the list of core platform services laid down in Article 2, point (2), the obligations laid down in Articles 5, 6 and 7 and their enforcement, to ensure that digital markets across the Union are contestable and fair. Following the evaluations, the Commission shall take appropriate measures, which may include legislative proposals.
4. The competent authorities of Member States shall provide any relevant information they have that the Commission may require for the purposes of drawing up the report referred to in paragraph 1.

Article 54

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 2 May 2023.

However, Article 3(6) and (7) and Articles 40, 46, 47, 48, 49 and 50 shall apply from 1 November 2022 and Article 42 and Article 43 shall apply from 25 June 2023.

Nevertheless, if the date of 25 June 2023 precedes the date of application referred to in the second paragraph of this Article, the application of Article 42 and Article 43 shall be postponed until the date of application referred to in the second paragraph of this Article.

This Regulation shall be binding in its entirety and directly applicable in all Member States.



ANNEX

A. ‘General’

1. This Annex aims at specifying the methodology for identifying and calculating the ‘active end users’ and the ‘active business users’ for each core platform service listed in Article 2, point (2). It provides a reference to enable an undertaking to assess whether its core platform services meet the quantitative thresholds set out in Article 3(2), point (b) and would therefore be presumed to meet the requirement in Article 3(1), point (b). Such reference will therefore equally be of relevance to any broader assessment under Article 3(8). It is the responsibility of the undertaking to come to the best approximation possible in line with the common principles and specific methodology set out in this Annex. Nothing in this Annex precludes the Commission, within the time limits laid down in the relevant provisions of this Regulation, from requiring the undertaking providing core platform services to provide any information necessary to identify and calculate the ‘active end users’ and the ‘active business users’. Nothing in this Annex should constitute a legal basis for tracking users. The methodology contained in this Annex is also without prejudice to any of the obligations laid down in this Regulation, notably in Article 3(3) and (8) and Article 13(3). In particular, the required compliance with Article 13(3) also means identifying and calculating ‘active end users’ and ‘active business users’ based either on a precise measurement or on the best approximation available, in line with the actual identification and calculation capacities that the undertaking providing core platform services possesses at the relevant point in time. Those measurements or the best approximation available shall be consistent with, and include, those reported under Article 15.
2. Article 2, points (20) and (21) set out the definitions of ‘end user’ and ‘business user’, which are common to all core platform services.
3. In order to identify and calculate the number of ‘active end users’ and ‘active business users’, this Annex refers to the concept of ‘unique users’. The concept of ‘unique users’ encompasses ‘active end users’ and ‘active business users’ counted only once, for the relevant core platform service, over the course of a specified time period (i.e. month in case of ‘active end users’ and year in case of ‘active business users’), no matter how many times they engaged with the relevant core platform service over that period. This is without prejudice to the fact that the same natural or legal person can simultaneously constitute an ‘active end user’ or an ‘active business user’ for different core platform services.

B. ‘Active end users’

1. The number of ‘unique users’ as regards ‘active end users’ shall be identified according to the most accurate metric reported by the undertaking providing any of the core platform services, specifically:
 - a. It is considered that collecting data about the use of core platform services from signed-in or logged-in environments would *prima facie* present the lowest risk of duplication, for example in relation to user behaviour across devices or platforms. Hence, the undertaking shall submit aggregate anonymized data on the number of unique end users per respective core platform service based on signed-in or logged-in environments, if such data exists.
 - b. In the case of core platform services which are also accessed by end users outside signed-in or logged-in environments, the undertaking shall additionally submit aggregate anonymized data on the number of unique end users of the respective core platform service based on an alternate

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metric capturing also end users outside signed-in or logged-in environments, such as internet protocol addresses, cookie identifiers or other identifiers such as radio frequency identification tags, provided that those addresses or identifiers are objectively necessary for the provision of the core platform services.

2. The number of ‘monthly active end users’ is based on the average number of monthly active end users throughout the largest part of the financial year. The notion ‘the largest part of the financial year’ is intended to allow an undertaking providing core platform services to discount outlier figures in a given year. Outlier figures inherently mean figures that fall significantly outside the normal and foreseeable figures. An unforeseen peak or drop in user engagement that occurred during a single month of the financial year is an example of what could constitute such outlier figures. Figures related to annually recurring occurrences, such as annual sales promotions, are not outlier figures.

C. ‘Active business users’

The number of ‘unique users’ as regards ‘active business users’ is to be determined, where applicable, at the account level with each distinct business account associated with the use of a core platform service provided by the undertaking constituting one unique business user of that respective core platform service. If the notion of ‘business account’ does not apply to a given core platform service, the relevant undertaking providing core platform services shall determine the number of unique business users by referring to the relevant undertaking.

D. ‘Submission of information’

1. The undertaking submitting to the Commission pursuant to Article 3(3) information concerning the number of active end users and active business users per core platform service shall be responsible for ensuring the completeness and accuracy of that information. In that regard:
 - a. The undertaking shall be responsible for submitting data for a respective core platform service that avoids under-counting and over-counting the number of active end users and active business users (for example, where users access the core platform services across different platforms or devices).
 - b. The undertaking shall be responsible for providing precise and succinct explanations about the methodology used to arrive at the information and for any risk of under-counting or over-counting of the number of active end users and active business users for a respective core platform service and for the solutions adopted to address that risk.
 - c. The undertaking shall provide data that is based on an alternative metric when the Commission has concerns about the accuracy of data provided by the undertaking providing core platform services.
2. For the purpose of calculating the number of ‘active end users’ and ‘active business users’:
 - a. The undertaking providing core platform service(s) shall not identify core platform services that belong to the same category of core platform services pursuant to Article 2, point (2) as distinct mainly on the basis that they are provided using different domain names, whether country code top-level domains (ccTLDs) or generic top-level domains (gTLDs), or any geographic attributes.

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- b. The undertaking providing core platform service(s) shall consider as distinct core platform services those core platform services, which are used for different purposes by either their end users or their business users, or both, even if their end users or business users may be the same and even if they belong to the same category of core platform services pursuant to Article 2, point (2).
 - c. The undertaking providing core platform service(s) shall consider as distinct core platform services those services which the relevant undertaking offers in an integrated way, but which:
 - (i) do not belong to the same category of core platform services pursuant to Article 2, point (2); or
 - (ii) are used for different purposes by either their end users or their business users, or both, even if their end users and business users may be the same and even if they belong to the same category of core platform services pursuant to Article 2, point (2).
- E. ‘Specific definitions’

The table below sets out specific definitions of ‘active end users’ and ‘active business users’ for each core platform service.

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Core platform services	Active end users	Active business users
Online intermediation services	Number of unique end users who engaged with the online intermediation service at least once in the month for example through actively logging-in, making a query, clicking or scrolling or concluded a transaction through the online intermediation service at least once in the month.	Number of unique business users who had at least one item listed in the online intermediation service during the whole year or concluded a transaction enabled by the online intermediation service during the year.
Online search engines	Number of unique end users who engaged with the online search engine at least once in the month, for example through making a query.	Number of unique business users with business websites (i.e. website used in commercial or professional capacity) indexed by or part of the index of the online search engine during the year.
Online social networking services	Number of unique end users who engaged with the online social networking service at least once in the month, for example through actively logging-in, opening a page, scrolling, clicking, liking, making a query, posting or commenting.	Number of unique business users who have a business listing or business account in the online social networking service and have engaged in any way with the service at least once during the year, for example through actively logging-in, opening a page, scrolling, clicking, liking, making a query, posting, commenting or using its tools for businesses.
Video-sharing platform services	Number of unique end users who engaged with the video-sharing platform service at least once in the month, for example through playing a segment of audiovisual content, making a query or uploading a piece of audiovisual content, notably including user-generated videos.	Number of unique business users who provided at least one piece of audiovisual content uploaded or played on the video-sharing platform service during the year.
Number-independent interpersonal communication services	Number of unique end users who initiated or participated in any way in a communication through the number-independent interpersonal communication service at least once in the month.	Number of unique business users who used a business account or otherwise initiated or participated in any way in a communication through the number-independent interpersonal communication service to communicate directly with an end user at least once during the year.

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Core platform services	Active end users	Active business users
Operating systems	Number of unique end users who utilised a device with the operating system, which has been activated, updated or used at least once in the month.	Number of unique developers who published, updated or offered at least one software application or software program using the programming language or any software development tools of, or running in any way on, the operating system during the year.
Virtual assistant	Number of unique end users who engaged with the virtual assistant in any way at least once in the month, such as for example through activating it, asking a question, accessing a service through a command or controlling a smart home device.	Number of unique developers who offered at least one virtual assistant software application or a functionality to make an existing software application accessible through the virtual assistant during the year.
Web browsers	Number of unique end users who engaged with the web browser at least once in the month, for example through inserting a query or website address in the URL line of the web browser.	Number of unique business users whose business websites (i.e. website used in commercial or professional capacity) have been accessed via the web browser at least once during the year or who offered a plug-in, extension or add-ons used on the web browser during the year.
Cloud computing services	Number of unique end users who engaged with any cloud computing services from the relevant provider of cloud computing services at least once in the month, in return for any type of remuneration, regardless of whether this remuneration occurs in the same month.	Number of unique business users who provided any cloud computing services hosted in the cloud infrastructure of the relevant provider of cloud computing services during the year.
Online advertising services	<p>For proprietary sales of advertising space:</p> <p>Number of unique end users who were exposed to an advertisement impression at least once in the month.</p> <p>For advertising intermediation services (including advertising networks, advertising exchanges and any other advertising intermediation services):</p> <p>Number of unique end users who were exposed to an advertisement impression which triggered the advertising intermediation service at least once in the month.</p>	<p>For proprietary sales of advertising space:</p> <p>Number of unique advertisers who had at least one advertisement impression displayed during the year.</p> <p>For advertising intermediation services (including advertising networks, advertising exchanges and any other advertising intermediation services):</p> <p>Number of unique business users (including advertisers, publishers or other intermediators) who interacted via or were served by the advertising intermediation service during the year.</p>