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Object:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND ADVICE on contestable and fair markets in the digital sector (digital markets legislation) - Analysis of the final compromise text for an agreement

I.INTRODUCTION

1. On 15 December 2020, the Commission submitted to the European Parliament and the Council the proposal on digital markets legislation (DMA).

2. The proposal is based on Article 114 of the Treaty on the Functioning of the Union European Union (TFEU). The ordinary legislative procedure is applicable.

3. At the Competitiveness Council meeting of 25 November 2021, Member States agreed unanimously approved the general guidelines for procurement legislation (DMA) and Digital Services Act (DSA).

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4. The European Parliament voted its position in plenary session in Strasbourg on 15 December 2021.

5. In the European Parliament, the main competent committee is the Market Committee Internal Affairs and Consumer Protection (IMCO). The rapporteur is Mr Andreas Schwab (EPP, DE).

6. Four trilogue meetings were held with the Parliament under the French Presidency, the January 11, February 3, March 1 and March 24, 2022.

7. At the last trilogue meeting, on which the Presidency reported to Coreper during At its meeting of 25 March 2022, the co-legislators reached a provisional political agreement on an overall compromise text, which is appended to this document.

8. The main elements of this compromise text are set out in section II below. The Presidency considers that the overall compromise reached with the European Parliament is balanced and that it respects the mandate it has received.

II. GLOBAL COMPROMISE

a) *Provisional political agreements reached during the last trilogue*

- On enforcement powers:

9. In Article 15 on the obligations applicable to emerging access controllers, Parliament has agreed to limit this list to those contained in the revised terms of reference.

10. In Article 16 on systematic non-compliance, Parliament has accepted the legal double test for triggering the systematic non-compliance procedure, i.e. 3 violations of the DMA over 8 years, and maintaining or strengthening the position of the access controller. The Presidency agreed to withdraw paragraph 2, compliance with the principle of proportionality being mentioned in paragraph 1.

11. In Article 39 on the deadline for entry into application, the Parliament accepted the deadline of 6 months.

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12. In Article 3(8) on the deadline for access controllers to comply with the obligations given by the DMA, Parliament accepted the 6-month deadline.

- On the scope and adaptability of the regulation:

13. The Presidency accepted the update of the quantitative thresholds for stock market valuation and financial revenues and the extension of the list of essential services to mariners and to virtual assistants, placing the thresholds at €75 billion and €7.5 billion. Parliament joined the Advice on the scope of delegated acts and Article 17 (including the possibility, where where appropriate, to propose the withdrawal of the obligations).

- On governance:

14. Parliament accepted the Presidency's compromise proposal on governance, which aims to compromise on the creation of a high-level group and on the strengthening of informing the Commission of the national decisions envisaged against the access controllers while essentially adopting the Council's initial position allowing thus preserving comitology, the role of national authorities, the power of investigation, investigations and the involvement of national courts.

- On the obligations of access controllers (articles 5 and 6):

15. In Article 5.a on targeted advertising, Parliament has presented a proposal to mention that the consent given by the active user could only be valid if it it was an adult. The Presidency and the Commission could not support this proposal which was not part of the scope of the DMA, which had as its object the regulation of digital markets. It was agreed to clearly separate the subjects between obligations of consent in the DMA, and treatment of subjects related to minors or data sensitive in the DSA.

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16. In Article 5.b, the prohibition of close rate parity clauses has been accepted by the Presidency.

17. The Presidency has accepted the principle of an obligation of interoperability for functionalities messaging services (new article 6a), under the conditions of strong guarantees in terms of security, progressive implementation and the willingness of competitors as active users.

18. In section 6.1.k and 6.1kb on the FRAND clause aiming at fair, reasonable and non discriminatory, the co-legislators reached a compromise aimed at extending the obligation to search engines and social networks, and to specify that the Commission would verify the compliance with this obligation at the level of the general conditions.

19. As to the terms of the safeguard/integrity clauses, Parliament agreed to join the Council position.

b) *Provisional agreements reached at technical level*

20. The co-legislators provisionally validated, ad referendum, the provisional agreements reached at the technical level, in particular with regard to the obligations relating to the prohibition of offers related (article 5.f), to default settings (article 6.b), about fines (article 26), the involvement of third parties in the implementation (Article 3 1.b) and the rebuttal procedure (section 3.4).

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III. **CONCLUSION**

21. In view of the above, the Permanent Representatives Committee is invited to:

– approve the compromise text set out in the annex,

and

– instruct the Presidency to send a letter to the Chair of the IMCO Committee of European Parliament confirming that, if the latter were to adopt its position as the first reading, in accordance with Article 294(3) TFEU and in the exact form which appears in the appendix - subject to clarification by lawyer-linguists -, the Council would approve, in accordance with Article 294(4) TFEU, the position of the European Parliament and the act would be adopted in the wording which corresponds to the position of the European Parliament.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on contestable and fair markets in the digital sector (Digital Markets Act)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

deleted

Acting in accordance with the ordinary legislative procedure,

Whereas:

[1] OJ C , , p. .
[2] OJ C , , p. .

(1) Digital services in general and online platforms in particular play an increasingly important role in the economy, in particular in the internal market, by ***allowing businesses to reach users throughout the Union, by facilitating cross-border trade and by opening entirely*** new business opportunities ***to a large number of companies*** in the Union ***to the benefit of the Union's consumers***.

(2) At the same time, ***among those digital services, core platform services*** feature a number of characteristics that can be exploited by ***the undertakings providing them***. These characteristics of core platform services include among others extreme scale economies, which often result from nearly zero marginal costs to add business users or end users. Other characteristics of core platform services are very strong network effects, an ability to connect many business users with many end users through the multi-sidedness of these services, a significant degree of dependence of both business users and end users, lock-in effects, a lack of multi-homing for the same purpose by end users, vertical integration, and data driven-advantages. All these characteristics combined with unfair conduct by ***undertakings providing*** these services can have the effect of substantially undermining the contestability of the core platform services, as well as impacting the fairness of the commercial relationship between ***undertakings undertakings proving*** such services and their business users and end users, leading to rapid and potentially far-reaching decreases in business users' and end users' choice in practice, and therefore can confer to the provider of those services the position of a so-called gatekeeper. ***At the same time, it should be recognised that services acting in a non-commercial purpose capacity such as collaborative projects should not be considered as core platform services for the purpose of this Regulation.***

(3) A small number of large ***undertakings providing*** core platform services have emerged with considerable economic power. Typically, they feature an ability to connect many business users with many end users through their services which, in turn, allows them to leverage their advantages, such as their access to large amounts of data, from one area of their activity to ***another***. Some of these ***undertakings*** exercise control over whole platform ecosystems in the digital economy and are structurally extremely difficult to challenge or contest by existing or new market operators, irrespective of how innovative and efficient these may be. Contestability is particularly reduced due to the existence of very high barriers to entry or exit, including high investment costs, which cannot, or not easily, be recuperated in case of exit, and absence of (or reduced access to) some key inputs in the digital economy, such as data. As a result, the likelihood increases that the underlying markets do not function well – or will soon fail to function well.

(4) The combination of those features of gatekeepers is likely to lead in many cases to serious imbalances in bargaining power and, consequently, to unfair practices and conditions for business users as well as end users of core platform services provided by gatekeepers, to the detriment of prices, quality, ***fair competition,*** choice and innovation therein.

(5) It follows that the market processes are often incapable of ensuring fair economic outcomes with regard to core platform services. Whereas Articles 101 and 102 ***of the Treaty on the Functioning of the European Union (TFEU)*** remain applicable to the conduct of gatekeepers, their scope is limited to certain instances of market power (e.g. dominance on specific markets) and of anti-competitive behaviour, while enforcement occurs ex post and requires an extensive investigation of often very complex facts on a case by case basis. Moreover, existing Union law does not address, or does not address effectively, the identified challenges to the well-functioning of the internal market posed by the conduct of gatekeepers, which are not necessarily dominant in competition-law terms.

(6) Gatekeepers have a significant impact on the internal market, providing gateways for a large number of business users, to reach end users, everywhere in the Union and on different markets. The adverse impact of unfair practices on the internal market and particularly weak contestability of core platform services, including their negative societal and economic implications, have led national legislators and sectoral regulators to act. A number of ▌ regulatory solutions have already been adopted ***at national level*** or proposed to address unfair practices and the contestability of digital services or at least with regard to some of them. This has created ▌ divergent regulatory solutions and thereby fragmentation of the internal market, thus raising the risk of increased compliance costs due to different sets of national regulatory requirements.

(7) Therefore, ***the objective of this Regulation is to contribute to the proper functioning of the internal market by laying down rules to ensure contestability and fairness for the markets in the digital sector in general and for business users and end-users of core platform services provided by gatekeepers in particular.*** Business users and end-users of core platform services provided by gatekeepers should be afforded appropriate regulatory safeguards throughout the Union against the unfair behaviour of gatekeepers in order to facilitate cross-border business within the Union and thereby improve the proper functioning of the internal market and to ***eliminate*** existing or likely emerging fragmentation in the specific areas covered by this Regulation. Moreover, while gatekeepers tend to adopt global or at least pan-European business models and algorithmic structures, they can adopt, and in some cases have adopted, different business conditions and practices in different Member States, which is liable to create disparities between the competitive conditions for the users of core platform services provided by gatekeepers, to the detriment of integration ***of*** the internal market.

(8) By approximating diverging national laws, obstacles to the freedom to provide and receive services, including retail services, within the internal market should be eliminated. A targeted set of ***legal obligations*** should therefore be established at Union level to ensure contestable and fair digital markets featuring the presence of gatekeepers within the internal market ***to the benefit of the Union's economy as a whole and ultimately of the Union's consumers***.

(9) *A fragmentation of the internal market can only be effectively averted if Member States are prevented from applying national rules which are within the scope of this Regulation and which pursue the same objectives as this Regulation. This does not preclude the possibility to apply other national legislation which pursues other legitimate public interest objectives as set out in the TFEU or overriding reasons of public interest as recognised by the case law of the Court of Justice of the European Union ('the Court of Justice'), to gatekeepers as defined within the meaning of this Regulation.*■

(9a) *At the same time, since this Regulation aims at complementing the enforcement of competition law, it should be specified that this Regulation is without prejudice to Articles 101 and 102 TFEU, to the corresponding national competition rules and to other national competition rules regarding unilateral behaviour that are based on an individualised assessment of market positions and behaviour, including its actual or likely effects and the precise scope of the prohibited behaviour, and which provide for the possibility of undertakings to make efficiency and objective justification arguments for the behaviour in question,* ***and to national rules concerning merger control****. However, the application of* ***those*** *rules should not affect the obligations imposed on gatekeepers under this Regulation and their uniform and effective application in the internal market.*

(10) Articles 101 and 102 TFEU and the corresponding national competition rules concerning anticompetitive multilateral and unilateral conduct as well as merger control have as their objective the protection of undistorted competition on the market. This Regulation pursues an objective that is complementary to, but different from that of protecting undistorted competition on any given market, as defined in competition-law terms, which is to ensure that markets where gatekeepers are present are and remain contestable and fair, independently from the actual, likely or presumed effects of the conduct of a given gatekeeper covered by this Regulation on competition on a given market. This Regulation therefore aims at protecting a different legal interest from those rules and should be without prejudice to their application.

(11) *This Regulation should also apply, without prejudice to the rules resulting from other acts of Union law regulating certain aspects of the provision of services covered by this Regulation, in particular Regulation (EU) 2019/1150 of the European Parliament and of the Council1, Regulation (EU) xx/xx/EU [DSA] of the European Parliament and of the Council2, Regulation (EU) 2016/679 of the European Parliament and of the Council3, Directive 2002/58/EC of the European Parliament and of the Council4, Directive (EU) 2019/790 of the European Parliament and of the Council5,* ***Directive (EU) 2019/882*** ▌, Directive***(EU) 2018/1808,*** *Directive (EU) 2015/2366 of the European Parliament and of the Council 6, Directive (EU) 2010/13/EU of the European Parliament and of the Council7, Directive 2005/29/EC of the European Parliament and of the Council8 and Council Directive 93/13/EEC9, as well as national rules aimed at enforcing or, as the case may be, implementing that Union legislation.* ▌

(12) Weak contestability and unfair practices in the digital sector are more frequent and pronounced for certain digital services than for others. This is the case in particular for widespread and commonly used digital services that mostly directly intermediate between business users and end users and where features such as extreme scale economies, very strong network effects, an ability to connect many business users with many end users through the multi-sidedness of these services, lock-in effects, a lack of multi-homing or vertical integration are the most prevalent. Often, there is only one or very few large ***undertakings providing*** those digital services. These ***undertakings*** have emerged most frequently as gatekeepers for business users and end users with far-reaching impacts, gaining the ability to easily set commercial conditions and terms in a unilateral and detrimental manner for their business users and end users. Accordingly, it is necessary to focus only on those digital services that are most broadly used by business users and end users and where [redacted] concerns about weak contestability and unfair practices by gatekeepers are more apparent and pressing from an internal market perspective.

(13) In particular, online intermediation services, online search engines, operating systems, online social networking, video sharing platform services, number-independent interpersonal communication services, cloud computing services***, virtual assistants, web browsers*** and online advertising services***, including online advertising intermediation services,*** all have the capacity to affect a large number of end users and businesses alike, which entails a risk of unfair business practices. They therefore should be included in the definition of core platform services and fall into the scope of this Regulation. Online intermediation services may also be active in the field of financial services, and they may intermediate or be used to provide such services as listed non-exhaustively in Annex II to Directive (EU) 2015/1535 of the European Parliament and of the Council[3]. ***For the purposes of this Regulation, these definitions of core platform services should be technology neutral and should be understood to encompass those offered on or through various means or devices, such as connected TV or embedded digital services in vehicles.*** In certain circumstances, the notion of end users should encompass users that are traditionally considered business users, but in a given situation do not use the core platform services to provide goods or services to other end users, such as for example businesses relying on cloud computing services for their own purposes.

(14) ***(deleted)***

[3] Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

(15) The fact that a digital service qualifies as a core platform service ▌ does not as such give rise to sufficiently serious concerns of contestability and unfair practices. It is only when a core platform service constitutes an important gateway and is operated by ***an undertaking*** with a significant impact in the internal market and an entrenched and durable position, or by ***an undertaking*** that will foreseeably have such a position in the near future, that such concerns arise. Accordingly, the targeted set of harmonised rules laid down in this Regulation should apply only to undertakings designated on the basis of these three objective criteria, and they should only apply to those of their core platform services that individually constitute an important gateway for business users to reach end users.
The fact that an undertaking providing core platform services may not only intermediate between business users and end users, but also between end users and end users, for example in the case of number independent interpersonal communications services, should not preclude the conclusion that such an undertaking is or may be an important gateway for business users to reach end users.

(16) In order to ensure the effective application of this Regulation to ***undertakings providing*** core platform services which are most likely to satisfy these objective requirements, and where unfair conduct weakening contestability is most prevalent and impactful, the Commission should be able to directly designate as gatekeepers those ***undertakings providing*** core platform services which meet certain quantitative thresholds. Such undertakings should in any event be subject to a fast designation process which should start ***once this Regulation becomes applicable***.

(17) A very significant turnover in the Union and the provision of a core platform service in at least three Member States constitute compelling indications that the ***undertaking providing*** a core platform service has a significant impact on the internal market. This is equally true where ***an undertaking providing*** a core platform service in at least three Member States has a very significant market capitalisation or equivalent fair market value. Therefore, ***an undertaking providing*** a core platform service should be presumed to have a significant impact on the internal market where it provides a core platform service in at least three Member States and where either its group turnover realised in the ***Union*** is equal to or exceeds a specific, high threshold or the market capitalisation of the group is equal to or exceeds a certain high absolute value. For ***undertakings providing*** core platform services that belong to undertakings that are not publicly listed, the equivalent fair market value ▌ should be ***used as reference***. The Commission ***may*** use its power to adopt delegated acts to develop an objective methodology to calculate that value. A high ***Union*** group turnover in conjunction with the threshold of users in the Union of core platform services reflects a relatively strong ability to monetise these users. A high market capitalisation relative to the same threshold number of users in the Union reflects a relatively significant potential to monetise these users in the near future. This monetisation potential in turn reflects in principle the gateway position of the undertakings concerned. Both indicators are in addition reflective of their financial capacity, including their ability to leverage their access to financial markets to reinforce their position. This may for example happen where this superior access is used to acquire other undertakings, which ability has in turn been shown to have potential negative effects on innovation. Market capitalisation can also be reflective of the expected future position and effect on the internal market of the ***undertakings*** concerned, notwithstanding a potentially relatively low current turnover. The market capitalisation value ***should*** be based on a level that reflects the average market capitalisation of the largest publicly listed undertakings in the Union over an appropriate period.

(18) ***Whereas a*** market capitalisation ▌ at or above the threshold ***in the last financial year*** should ***give rise to a*** presumption that the ***undertaking providing*** core platform services has a ▌ significant impact on the internal ***market, a sustained*** market ***capitalisation of the undertaking providing core platform services at or above the threshold level over three or more years should be considered as further strengthening that presumption***.

(19) ***By contrast,*** there may be a number of factors concerning market capitalisation that would require an in-depth assessment in determining whether ***an undertaking providing*** core platform services should be deemed to have a significant impact on the internal market. This may be the case where the market capitalisation of the ***undertaking providing*** core platform services in preceding financial years was significantly lower than the ***threshold and*** the volatility of its market capitalisation over the observed period was disproportionate to overall equity market volatility or its market capitalisation trajectory relative to market trends was inconsistent with a rapid and unidirectional growth.

(20) A very high number of business users that depend on a core platform service to reach a very high number of monthly active end users allow the ***undertaking providing*** that service to influence the operations of a substantial part of business users to its advantage and indicate in principle that the ***undertaking*** serves as an important gateway. The respective relevant levels for those numbers should be set representing a substantive percentage of the entire population of the Union when it comes to end users and of the entire population of businesses using platforms to determine the threshold for business users. ***Active end users and business users should be identified and calculated in a way to adequately represent the role and reach of the specific core platform service in question. In order to provide legal certainty for gatekeepers, elements to determine the number of active end users and business users per core platform service should be set out in an Annex to this Regulation. Such elements can be impacted by technological and other developments. The Commission should therefore be empowered to adopt a delegated act to amend the methodology and the list of indicators of the Annex to this Regulation to determine the number of active end users and active business users.***

(21) An entrenched and durable position in its operations or the foreseeability of achieving such a position future occurs notably where the contestability of the position of the ***undertaking providing*** the core platform service is limited. This is likely to be the case where that ***undertaking*** has provided a core platform service in at least three Member States to a very high number of business users and end users during at least three years.

(22) Such thresholds can be impacted by market and technical developments. The Commission should therefore be empowered to adopt delegated acts to specify the methodology for determining whether the quantitative thresholds are met, and to regularly adjust it to market and technological developments where necessary. ***Such delegated acts should not modify the quantitative thresholds set out in this Regulation***.

(23) ***Undertakings providing*** core platform services which meet the quantitative thresholds ***should be able, in exceptional*** circumstances***, to rebut the presumption by demonstrating that, the undertaking does not satisfy the*** requirements ***of Article 3(1) although it meets all the quantitative thresholds of Article 3(2)***. The burden of adducing evidence that the presumption deriving from the fulfilment of quantitative thresholds should not ▌ apply ▌ should be borne by ***the undertaking.*** In its assessment ***of the evidence and arguments produced***, the Commission should take into account only the elements which directly relate to the ***quantitative criteria, namely the impact of the undertaking on the internal market beyond revenue or market cap, such as its size in absolute terms, and number of Member States where*** it is ***present; by how much the actual business user and end user numbers exceed the thresholds and the importance of the undertaking's core platform service considering the overall scale of activities of the respective core platform service; and the number of years for which the thresholds have been met***. Any justification on economic grounds seeking to ***engage into market definition or to*** demonstrate efficiencies deriving from a specific type of behaviour by the ***undertaking providing*** core platform services should be discarded, as it is not relevant to the designation as a gatekeeper. ***If the arguments submitted are not sufficiently substantiated because they do not manifestly put into question the presumption, the Commission should be able to reject the arguments within the timeframe of 45 working days foreseen for the designation.*** The Commission should be able to take a decision by relying on ***information available on*** the quantitative thresholds where the ***undertaking*** obstructs the investigation by failing to comply with the investigative measures taken by the Commission.

(24) Provision should also be made for the assessment of the gatekeeper role of ***undertakings providing*** core platform services which do not satisfy all of the quantitative thresholds, in light of the overall objective requirements that they have a significant impact on the internal market, act as an important gateway for business users to reach end users and benefit from a durable and entrenched position in their operations or it is foreseeable that it will do so in the near future. ***When the undertaking providing core platform services is a medium-sized, small or micro enterprise, the assessment should carefully take into account whether such an undertaking would be able to substantially undermine the contestability of the core platform services since this regulation primarily targets large undertakings with considerable economic power and not medium-sized, small or micro enterprises.***

(25) Such an assessment can only be done in light of a market investigation, while taking into account the quantitative thresholds. In its assessment the Commission should pursue the objectives of preserving and fostering the level of innovation, the quality of digital products and services, the degree to which prices are fair and competitive, and the degree to which quality or choice for business users and for end users is or remains high. Elements that are specific to the ***undertakings providing*** core platform services concerned, such as extreme scale ***or scope*** economies, very strong network effects, ***data-driven advantages,*** an ability to connect many business users with many end users through the multi-sidedness of these services, lock-in effects, ▌ lack of multi-homing***, conglomerate corporate structure*** or vertical integration, can be taken into account. In addition, a very high market capitalisation, a very high ratio of equity value over profit or a very high turnover derived from end users of a single core platform service can point to the tipping of the market or leveraging potential of such ***undertakings***. Together with market capitalisation, high ***relative*** growth ***ratesare*** examples of dynamic parameters that are particularly relevant to identifying such ***undertakings providing*** core platform services that are foreseen to become entrenched. The Commission should be able to take a decision by drawing adverse inferences from facts available where the ***undertaking*** significantly obstructs the investigation by failing to comply with the investigative measures taken by the Commission.

(26) A particular subset of rules should apply to those ***undertakings providing*** core platform services that are foreseen to enjoy an entrenched and durable position in the near future. The same specific features of core platform services make them prone to tipping: once ***an undertaking providing the*** service ▌ has obtained a certain advantage over rivals or potential challengers in terms of scale or intermediation power, its position may become unassailable and the situation may evolve to the point that it is likely to become durable and entrenched in the near future. Undertakings can try to induce this tipping and emerge as gatekeeper by using some of the unfair conditions and practices regulated in this Regulation. In such a situation, it appears appropriate to intervene before the market tips irreversibly.

(27) However, such an early intervention should be limited to imposing only those obligations that are necessary and appropriate to ensure that the services in question remain contestable and allow to avoid the qualified risk of unfair conditions and practices. Obligations that prevent the ***undertaking providing*** core platform services concerned from achieving an entrenched and durable position in its operations, such as those preventing ▌ leveraging, and those that facilitate switching and multi-homing are more directly geared towards this purpose. To ensure proportionality, the Commission should moreover apply from that subset of obligations only those that are necessary and proportionate to achieve the objectives of this Regulation and should regularly review whether such obligations should be maintained, suppressed or adapted.

(28) This should allow the Commission to intervene in time and effectively, while fully respecting the proportionality of the considered measures. It should also reassure actual or potential market participants about the fairness and contestability of the services concerned.

(29) Designated gatekeepers should comply with the obligations laid down in this Regulation in respect of each of the core platform services listed in the relevant designation decision. The mandatory rules should apply taking into account the conglomerate position of gatekeepers, where applicable. Furthermore, implementing measures that the Commission may by decision impose on the gatekeeper ▌ should be designed in an effective manner, having regard to the features of core platform services as well as possible circumvention risks and in compliance with the principle of proportionality and the fundamental rights of the undertakings concerned as well as those of third parties.

(30) The very rapidly changing and complex technological nature of core platform services requires a regular review of the status of gatekeepers, including those that are foreseen to enjoy a durable and entrenched position in their operations in the near future. To provide all of the market participants, including the gatekeepers, with the required certainty as to the applicable legal obligations, a time limit for such regular reviews is necessary. It is also important to conduct such reviews on a regular basis and at least every ***three*** years. ***Furthermore, it is important to clarify that not every change of the facts on the basis of which an undertaking providing core platform services has been designated as a gatekeeper will mean that the designation decision needs to be amended. This will only be the case if the changed facts also lead to a change in the assessment. Whether the latter is the case and the designation decision needs to be amended should be based on a case-by-case assessment of the individual facts and circumstances.***

(31) ***(deleted)***

(32) To safeguard the fairness and contestability of core platform services provided by gatekeepers, it is necessary to provide in a clear and unambiguous manner for a set of harmonised obligations with regard to those services. Such rules are needed to address the risk of harmful effects of ▌ practices ▌ by gatekeepers, to the benefit of the business environment in the services concerned, to the benefit of users and ultimately to the benefit of society as a whole.

The obligations correspond to those practices that are considered as undermining contestability or being unfair or both by taking into account the features of the digital sector and which have a particularly negative direct impact on business users and end users. The obligations ***laid down in this regulation may specifically take into account the nature of the core platform services provided. The obligations in this Regulation should not only ensure contestability and fairness with respect to designated core platform services, but also with respect to other digital products and services into which gatekeepers leverage their gateway position, which are often provided together with or in support of the core platform services***.

(33) ***For the purpose of*** this Regulation ***contestability should relate to the ability of undertakings to effectively overcome barriers to entry and expansion and challenge the gatekeeper on the merits of their products and services. The features of*** core platform services ***in the digital sector, such as network effects, strong economies of scale, and benefits from data have limited the contestability of those services and the related ecosystems. Such a weak contestability reduces the incentives to innovate and improve products and services for the gatekeeper, its business users, its challengers and customers and thus negatively affects the innovation potential of the wider online platform economy. Contestability of the services in the digital sector can also be limited if there is more than one gatekeeper for a core platform service. This Regulation should therefore ban certain practices by gatekeepers that are liable to increase barriers to entry or expansion, and impose certain obligations on gatekeepers that tend to lower these barriers. The obligations should also address situations where the position of the gatekeeper may be entrenched to such an extent that inter-platform competition is not effective in the short term so that intra-platform competition needs to be created or increased***.

(34) ***For the purpose of this Regulation unfairness should relate to an imbalance between the rights and obligations of business users where the gatekeeper obtains a disproportionate advantage. Market participants, including business users of core platform services and alternative providers of services provided together with or in support of such core platform services,*** should ***have the ability to adequately capture the benefits resulting from their innovative or other efforts. Due to their gateway position and superior bargaining power, gatekeepers can engage in behaviour that does not allow others to capture fully the benefits of their own contributions, and unilaterally set unbalanced conditions for the use of their core platform services or services provided together with or in support of their core platform services. Such imbalance is not excluded by the fact that the gatekeeper offers a particular service free of charge to a specific group of users, and may also consist in excluding or discriminating against business users, in particular if the latter compete with the gatekeepers' services. This Regulation should therefore impose obligations on gatekeepers addressing such behaviour***.

(34a) Contestability and fairness are intertwined. The lack of, or weak, contestability for a certain service can enable a gatekeeper to engage in unfair practices. Similarly, unfair practices by a gatekeeper can reduce the possibility of business users or others to contest the gatekeeper's position. A particular obligation in this Regulation may therefore address both elements.

(35) The obligations laid down in this Regulation are ***therefore*** necessary to address identified public policy concerns, there being no alternative and less restrictive measures that would effectively achieve the same result, having regard to need to safeguard public order, protect privacy and fight fraudulent and deceptive commercial practices.

(36) ***Gatekeepers often directly collect personal data of end users for the purpose of providing advertising services when end users use third parties' websites and apps. Third parties may also provide gatekeepers with personal data of their end*** users ***in order to make use of certain services offered by the gatekeepers in the context of their core platform*** services***, such as custom audiences. The processing for the purpose of providing advertising services of personal data from third parties using*** gatekeepers***' core platform services*** gives ***gatekeepers*** potential advantages in terms of accumulation of data, thereby raising barriers to entry. ***This is because gatekeepers process personal data from a significantly larger number of third parties than other undertakings. Similar advantages result from the conduct of (i) combining end user data collected from a core platform service with data collected from further services, (ii) cross-using personal data from a core platform service in other services offered separately by the gatekeeper, notably services which are not offered together with or in support of the relevant core platform service, and vice-versa or (iii) signing in end users to different services of gatekeepers in order to combine personal data.*** To ensure that gatekeepers do not unfairly undermine the contestability of core platform services, ***gatekeepers*** should enable ▌ end users to freely choose to opt-in to such ***data processing and sign-in*** practices by offering a less personalised ***but equivalent*** alternative***, and without making the use of the core platform service or certain functionalities thereof conditional upon the end user's consent. This*** should ***be without prejudice to the gatekeeper processing data or signing in end users to a service, relying on the legal basis under Article 6(1), points I, (d) and (e) of the Regulation (EU) 2016/679 but not being able to rely on Article 6(1), points (b) and (f) of the Regulation (EU) 2016/679***.

(36a) The less personalised alternative should not be different or of degraded quality compared to the service offered to the end users who provide consent, unless a degradation of quality is a direct consequence of the gatekeeper not being able to process such data or signing in end users to a service. Not giving consent should not be more difficult than giving consent. When the gatekeeper requests consent, it should proactively present a user-friendly solution to the end user to provide, modify or withdraw consent in an explicit, clear and straightforward manner. In particular, consent should be given by a clear affirmative action or statement establishing a freely given, specific, informed and unambiguous indication of agreement by the end user, as defined in Regulation (EU) 2016/679. At the time of giving consent, and only where applicable, the end user should be informed that not giving consent may lead to a less personalized offer, but that otherwise the core platform service will remain unchanged and that no functionalities will be suppressed. Exceptionally, if consent cannot be given directly to the gatekeeper's core platform service, end users should be able to provide consent through each third party service that makes use of that core platform service, to allow the gatekeeper to process personal data for the purposes of providing advertising services.

Lastly, it shall be as easy to withdraw as to give consent. Gatekeepers should not design, organise or operate their online interfaces in a way that deceives, manipulates or otherwise materially distorts or impairs the ability of end users to freely give consent. In particular, gatekeepers should not be allowed to prompt end users more than once a year to give consent for the same processing purpose for which they initially did not give consent or had withdrawn it. This Regulation is without prejudice to Regulation (EU) 2016/679, including its enforcement framework, which remains fully applicable with respect to any claims by data subjects relating to an infringement of their rights under Regulation (EU) 2016/679.

(36b) ***Children merit specific protection with regard to their personal data, in particular as regards the use of their personal data for the purposes of commercial communication or creating user profiles. The protection of children online is an important objective of the Union and should be reflected in the relevant EU law. [In this context, due regard should be given to Regulation (EU) xx/xx/EU [DSA] of the European Parliament and of the Council]. Nothing in this Regulation exempts gatekeepers from their obligations concerning protection of children laid down in applicable EU law.***

(37) ***Gatekeepers may in certain cases, for instance through the imposition of contractual terms and conditions,*** restrict the ability of business users of their online intermediation services to offer ***products*** or services to end users under more favourable conditions, including price, through other online intermediation services ***or through direct distribution channels. Where such restrictions relate to third party*** online intermediation services, ***theylimitinter-platform*** contestability, which in turn limits choice of alternative online intermediation channels for end users. ***Where such restrictions relate to direct distribution channels, they unfairly limit the freedom of business users to use such channels.*** To ensure that business users of online intermediation services of gatekeepers can freely choose alternative online intermediation services ***or direct distribution channels*** and differentiate the conditions under which they offer their products or services to ▌ end users, it should not be accepted that gatekeepers limit business users from choosing to differentiate commercial conditions, including price. Such a restriction should apply to any measure with equivalent effect, such as for example increased commission rates or de-listing of the offers of business users.

(38) To prevent further reinforcing their dependence on the core platform services of gatekeepers, ***and in order to promote multi-homing,*** the business users of these gatekeepers should be free in promoting and choosing the distribution channel they consider most appropriate to interact with any end users that these business users have already acquired through core platform services provided by the gatekeeper ***or through other distribution channels. This should apply to the promotion of offers, including*** through ***a software application*** of the ***business user, any form of communication and conclusion of contracts between*** business ***users and end users. An acquired end user is an end user who has already entered into a commercial relationship with the*** business ***user and, where applicable, the gatekeeper has been directly or indirectly remunerated by the business user for facilitating the initial acquisition*** of the ***end user by the business user. Such commercial relationships may be on either a paid or a free basis, such as free trials or free service tiers, and may have been entered into either on the gatekeeper's*** core platform service ***or through any other channel. Conversely, end users should also be free to choose offers of such business users and to enter into contracts with them either through core platform services of*** the gatekeeper***, if applicable, or from a direct distribution channel of the business user or another indirect distribution channel such business user may use***.

(38a) The ability of end users to acquire content, subscriptions, features or other items outside the core platform services of the gatekeeper should not be undermined or restricted. In particular, it should be avoided that gatekeepers restrict end users from access to and use of such services via a software application running on their core platform service. For example, subscribers to online content purchased outside a software application, software application store or virtual assistant should not be prevented from accessing such online content on a software application on the gatekeeper's core platform service simply because it was purchased outside such software application, software application store or virtual assistant.

(39) To safeguard a fair commercial environment and protect the contestability of the digital sector it is important to safeguard the right of business users ***and end users, including whistleblowers,*** to raise concerns about unfair behaviour ***raising any issue of non-compliance with the relevant Union or national law*** by gatekeepers with any relevant administrative or other public authorities***, including national courts***. For example, business users ***or end users*** may want to complain about different types of unfair practices, such as discriminatory access conditions, unjustified closing of business user accounts or unclear grounds for product ***de- listings***. Any practice that would in any way inhibit ***or hinder*** such a possibility of raising concerns or seeking available redress, for instance by means of confidentiality clauses in agreements or other written terms, should therefore be prohibited. This should be without prejudice to the right of business users and gatekeepers to lay down in their agreements the terms of use including the use of lawful complaints-handling mechanisms, including any use of alternative dispute resolution mechanisms or of the jurisdiction of specific courts in compliance with respective Union and national law**.** This should also be without prejudice to the role gatekeepers play in the fight against illegal content online.

(40) ***Certain services offered together with or in support of relevant core platform services of the gatekeeper, such as*** identification services***, web browser engines, payment services or technical services that support the provision of payment services, such as payment systems for in-app purchases,*** are crucial for business users to conduct their business ***and*** allow them to optimise services**.**
In particular, each browser is built on a web browser engine, which is responsible for key browser functionality such as speed, reliability and web compatibility. When gatekeepers operate and impose browser engines, they are in a position to determine the functionality and standards that will apply not only to their own web browsers, but also to ***competing web browsers and, in turn, to web software applications***.

Gatekeepers should therefore not use their position as ***undertakings providing*** core platform services to require their dependent business users to ***use any of those*** services provided by the gatekeeper itself as part of the provision of services or products by these business users**.** ***In order to avoid that gatekeepers indirectly impose*** their ***own services offered together with or in support of core platform services on business users, gatekeepers should also not be able to require*** end users ***to use such services, when that requirement would be imposed in the context of the service provided to end users by the business user using the core platform service of the gatekeeper. This provision aims at protecting the freedom of the business user to choose alternative*** services ***to the ones of the gatekeeper, but should not be construed as an obligation on the business user to offer such alternatives to its end*** users.

(41) ***The conduct of requiring business users or*** end users ***to subscribe to or register with any further core platform*** services ***of*** gatekeepers ***identified pursuant to Article 3(7) or which meet the thresholds in Article 3(2) point (b) as a condition to use, access, sign up for or register with a core platform service gives the gatekeeper a means of capturing and locking-in new business users and end users for their core platform services by ensuring that business users cannot access one core platform*** service ***without also at least registering or creating an account for the purposes of receiving a second core platform service. This conduct also gives gatekeepers a potential advantage in terms of accumulation of data. As such, this conduct is liable to raise barriers to entry***.

(42) The conditions under which gatekeepers provide online advertising services to business users including both advertisers and publishers are often non-transparent and opaque. This opacity is partly linked to the practices of a few platforms, but is also due to the sheer complexity of modern day programmatic advertising. The sector is considered to have become ***less transparent*** after the introduction of new privacy legislation ▌ . This often leads to a lack of information and knowledge for advertisers and publishers about the conditions of the advertising services they ***purchase*** and undermines their ability to switch ***between undertakings providing*** online advertising services. Furthermore, the costs of online advertising ***under these conditions*** are likely to be higher than they would be in a fairer, more transparent and contestable platform environment. These higher costs are likely to be reflected in the prices that end users pay for many daily products and services relying on the use of online advertising. Transparency obligations should therefore require gatekeepers to provide advertisers and publishers to whom they supply online advertising services, when requested***, with free of charge*** information that allows both sides to understand the price paid for each of the different advertising services provided as part of the relevant advertising value chain. ***This information should be provided, upon request, to an advertiser at the level of an individual advertisement in relation to the price and fees charged to that advertiser and, subject to an agreement by the publisher owning the inventory where the advertisement is displayed, the remuneration received by that consenting publisher. The provision of this information on a daily basis will allow advertisers to receive information that has a sufficient level of granularity necessary to compare the costs of using the online advertising services of gatekeepers with the costs of using online advertising services of alternative undertakings. In case some publishers do not provide their consent to the sharing of the relevant information with the advertiser, the gatekeeper should provide the advertiser with the information about the daily average remuneration received by those publishers for the relevant advertisements. The same obligation and principles of sharing the relevant information concerning the provision of online advertising services should apply in case of requests by publishers. Since gatekeepers may use different pricing models for the provision of online advertising services to advertisers and publishers, for instance a price per impression, per view or any other criterion, gatekeepers should also provide the method with which each of the prices and remunerations are calculated.***

(43) A gatekeeper may in certain circumstances have a dual role as ***an undertaking providing*** core platform services whereby it provides a core platform service***, and possibly other services offered together with or in support of that core platform service,*** to its business users, while also competing ***or intending to compete*** with those same business users in the provision of the same or similar services or products to the same end users. In these circumstances, a gatekeeper may take advantage of its dual role to use data, generated ***or provided*** by its business users ***in the context of activities by those business users when using*** the core platform ***services or the services offered together with or in support of those core platform services***, for the purpose of its own services ***or products. The data of the business user may also include any data generated by or provided during the activities*** of its ***end*** users. This may be the case, for instance, where a gatekeeper provides an online marketplace or app store to business users, and at the same time ***offers*** services as an ***undertaking providing online retail services or*** application software ▌. To prevent gatekeepers from unfairly benefitting from their dual role, it should be ensured that they refrain from using any aggregated or non-aggregated data, which may include anonymised and personal data that is not publicly available to offer similar services to those of their business users. This obligation should apply to the gatekeeper as a whole, including but not limited to its business unit that competes with the business users of a core platform service.

(44) Business users may also purchase advertising services from ***an undertaking providing*** core platform services for the purpose of providing goods and services to end users. In this case, it may occur that the data are not generated on the core platform service, but are provided to the core platform service by the business user or are generated based on its operations through the core platform service concerned. In certain instances, that core platform service providing advertising may have a dual role ***as an undertaking providing advertising services*** and as ***undertaking providing services competing with business users***. Accordingly, the obligation prohibiting a dual role gatekeeper from using data of business users should apply also with respect to the data that a core platform service has received from businesses for the purpose of providing advertising services related to that core platform service.

(45) In relation to cloud computing services, this obligation should extend to data provided or generated by business users of the gatekeeper in the context of their use of the cloud computing service of the gatekeeper, or through its software application store that allows end users of cloud computing services access to software applications. This obligation should not affect the right of gatekeepers to use aggregated data for providing ***other services offered together with or in support of its core platform service, such as*** data analytics services, subject to compliance with ***Regulation (EU) 2016/679 and*** Directive 2002/58/EC as well as with the relevant obligations in this Regulation concerning ***such*** services.

(46) A gatekeeper ***can*** use different means to favour its own ***or third party*** services or products on its ***operating system, virtual assistant or web browser***, to the detriment of the same or similar services that end users could obtain through ***other*** third parties. This may for instance be the case where certain software applications or services are pre-installed by a gatekeeper. To enable end user choice, gatekeepers should not prevent end users from un-installing any ▌ software applications on its ***operating system. The gatekeeper may restrict such un-installation only when such applications are essential to the functioning of the operating system or the device. Gatekeepers should also allow end users to easily change the default settings on the operating system, virtual assistant and web browser when those*** favour their own software applications ***and services. This includes prompting a choice screen, at the moment of the users' first use of an online search engine, virtual assistant or web browser of the gatekeeper designated pursuant to Article 3(7), allowing end users to select an alternative default service when the operating system of the gatekeeper directs end users to the gatekeepers' designated online search engine, virtual assistant and/or web browser and when the virtual assistant and/or the web browser of the gatekeeper direct the user to the gatekeepers' designated online search engine***.

(47) The rules that the gatekeepers set for the distribution of software applications may in certain circumstances restrict the ability of end users to install and effectively use third party software applications or software application stores on operating systems or hardware of the relevant gatekeeper and restrict the ability of end users to access these software applications or software application stores outside the core platform services of that gatekeeper. Such restrictions may limit the ability of developers of software applications to use alternative distribution channels and the ability of end users to choose between different software applications from different distribution channels and should be prohibited as unfair and liable to weaken the contestability of core platform services. ***To ensure contestability, the gatekeeper should furthermore allow the third party software applications or software application stores to prompt the end user to decide whether that service should become the default and enable that change to be carried out easily.*** In order 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 the gatekeeper concerned may implement proportionate technical or contractual measures to achieve that goal if the gatekeeper demonstrates that such measures are necessary and justified and that there are no less restrictive means to safeguard the integrity of the hardware or operating system. ***The integrity of the hardware or the operating system should include any design options that are necessary to be implemented and maintained in order for the hardware or the operating system to be protected against unauthorised access, by ensuring that security controls specified for the hardware or the operating system concerned cannot be compromised. Furthermore, in order to ensure that third party software applications or software application stores do not undermine end users' security, the gatekeeper may implement 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 if the gatekeeper demonstrates that such measures and settings are strictly necessary and justified and that there are no less restrictive means to achieve that goal. The gatekeeper should be prevented from implementing such measures as a default setting or pre-installation.***

(48) Gatekeepers are often vertically integrated and offer certain products or services to end users through their own core platform services, or through a business user over which they exercise control which frequently leads to conflicts of interest. This can include the situation whereby a gatekeeper offers its own online intermediation services through an online search engine. When offering those products or services on the core platform service, gatekeepers can reserve a better position to their own offering, in terms of ranking, ***and related indexing and crawling,*** as opposed to the products of third parties also operating on that core platform service. This can occur for instance with products or services, including other core platform services, which are ranked in the results communicated by online search engines, or which are partly or entirely embedded in online search engines results, groups of results specialised in a certain topic, displayed along with the results of an online search engine, which are considered or used by certain end users as a service distinct or additional to the online search engine. Other instances are those of software applications which are distributed through software application stores***, or videos distributed through a video sharing platform***, or products or services that are given prominence and display in the newsfeed of a social network, or products or services ranked in search results or displayed on an online marketplace***, or products or services offered through a virtual assistant. Such reserving of a better position of gatekeeper's own offering may take place even before ranking following a query, such as during crawling and indexing. For example, already during crawling, which is a discovery process by which new and updated content online is being found, as well as indexing, which entails storing and organising of the content found during the crawling process, the gatekeeper may favour its own content as opposed to content of third parties***. In those circumstances, the gatekeeper is in a dual-role position as intermediary for third party ***undertakings*** and as ***undertaking directly providing*** products or services of the gatekeeper. Consequently, these gatekeepers have the ability to undermine directly the contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper.

(49) In such situations, the gatekeeper should not engage in any form of differentiated or preferential treatment in ranking on the core platform service, ***and related indexing and crawling,*** whether through legal, commercial or technical means, in favour of products or services it offers itself or through a business user which it controls. To ensure that this obligation is effective, it should also be ensured that the conditions that apply to such ranking are also generally fair ***and transparent***. Ranking should in this context cover all forms of relative prominence, including display, rating, linking or voice results ***and should also include instances where a core platform service presents or communicates only one result to the end user***. To ensure that this obligation is effective and cannot be circumvented it should also apply to any measure that may have an equivalent effect to the differentiated or preferential treatment in ranking. The guidelines adopted pursuant to Article 5 of Regulation (EU) 2019/1150 should also facilitate the implementation and enforcement of this obligation. [4]

(50) Gatekeepers should not restrict or prevent the free choice of end users by technically ***or otherwise*** preventing switching between or subscription to different software applications and services. This would allow more ***undertakings*** to offer their services, thereby ultimately providing greater choice to the end user. Gatekeepers should ensure a free choice irrespective of whether they are the manufacturer of any hardware by means of which such software applications or services are accessed and shall not raise artificial technical ***or other*** barriers so as to make switching impossible or ineffective. The mere offering of a given product or service to consumers, including by means of pre-installation, as well as the improvement of the offering to end users, such as price reductions or increased quality, should not be construed as constituting a prohibited barrier to switching.

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[4] [redacted]

(51) Gatekeepers can hamper the ability of end users to access online content and services including software applications. Therefore, rules should be established to ensure that the rights of end users to access an open internet are not compromised by the conduct of gatekeepers. Gatekeepers can also technically limit the ability of end users to effectively switch between different ***undertakings providing*** Internet access service ▌ , in particular through their control over operating systems or hardware. This distorts the level playing field for Internet access services and ultimately harms end users. It should therefore be ensured that gatekeepers do not unduly restrict end users in choosing ***the undertaking providing*** their Internet access service ▌

(51a) A gatekeeper may provide services or hardware, such as wearable devices, that access software or hardware features of a device accessed or controlled via an operating system or virtual assistant in order to offer specific functionalities to end users. In this case competing service or hardware providers, such as providers of wearable devices, require equally effective interoperability with, and access for the purposes of interoperability to, the same software or hardware features to be able to provide a competitive offering to end users.

(52) Gatekeepers may also have a dual role as developers of operating systems and device manufacturers, including any technical functionality that such a device may have. For example, a gatekeeper that is a manufacturer of a device may restrict access to some of the functionalities in this device, such as near-field-communication technology ***secure elements and processors, authentication mechanisms and*** the software used to operate ***these technologies***, which may be required for the effective provision of ***a*** service ▌ offered ***together with or in support of the core platform service*** by the gatekeeper ***as well as by any potential third party undertaking providing such service.***

(52a) ***If dual roles are used in a manner that prevents alternative service and hardware providers from having access under equal conditions to the same operating system, hardware or software features that are available or usedby the gatekeeper in the provision of its own complementary or supporting services or hardware, this could significantly undermine innovation by such alternative providers as well as choice for end users. The gatekeepers should, therefore, be obliged to ensure free of charge effective interoperability with, and access for the purposes of interoperability to, the same operating system, hardware or software features that are available or used in the provision of its own complementary and supporting services and hardware. Such access may equally be required by software applications related to the relevant services offered together with or in support of the core platform service in order to effectively develop and provide functionalities interoperable with those offered by gatekeepers. The aim of the obligations is to allow competing third parties to interconnect through interfaces or similar solutions to the respective features as effectively as the gatekeeper's own services or hardware.***

(53) The conditions under which gatekeepers provide online advertising services to business users including both advertisers and publishers are often non-transparent and opaque. This often leads to a lack of information for advertisers and publishers about the effect of a given ad. To further enhance fairness, transparency and contestability of online advertising services designated under this Regulation as well as those that are fully integrated with other core platform services of the same ***undertaking***, ▌ gatekeepers should ▌ provide advertisers and publishers, ***and third parties authorised by advertisers and publishers,*** when requested, with free of charge access to the ***gatekeepers'*** performance measuring tools ***and the data, including aggregated and non-aggregated data,*** necessary for advertisers, advertising agencies acting on behalf of a company placing advertising, as well as for publishers to carry out their own independent verification of the provision of the relevant online advertising services.

(54) Gatekeepers benefit from access to vast amounts of ▌ data that they collect while providing the core platform services as well as ▌ other digital services. To ensure that gatekeepers do not undermine the ▌ contestability of core platform services as well as the innovation potential of ▌ the dynamic digital sector by restricting ***switchingor multi-homing, end*** users***, and third parties authorised by an end user,*** should be granted effective and ▌ immediate access to the data they provided or ***that was generated through*** their ***activity on*** the relevant core ▌ platform services of the gatekeeper***. The data should be received in a format that can be immediately and effectively accessed and used by the end user or the relevant third party authorised by the end user to which the data is ported.***

Gatekeepers should also ensure by means of appropriate and high quality technical measures, such as application programming interfaces, that end users or third parties authorised by end users can freely port the data continuously and in real time. This should apply also to any other data at different ▌ levels of aggregation that may be necessary to effectively enable such ▌ portability. ***For the avoidance of doubt, the obligation on the gatekeeper to ensure effective portability of data under this Regulation complements the right of data portability under the Regulation (EU) 2016/679***. Facilitating switching or ***multi- homing*** should lead, in ▌ turn, to an increased choice for ▌ end users and an ▌ incentive for gatekeepers and business users to innovate.

(55) Business users that use ▌ core platform services provided by gatekeepers**,** and end users of such business users provide and generate a vast amount of data ▌. In order to ensure that business users have access to the relevant data thus generated, the gatekeeper should, upon their request, ***provide effective*** access, free of charge, to such data. Such access should also be given to third parties contracted by the business user, who are acting as processors of this data for the business user. Data provided or generated by the same business users and the same end users of these business users in the context of other services provided by the same gatekeeper***, including services offered together with or in support of core platform services,*** may be concerned where this is inextricably linked to the relevant request. To this end, a gatekeeper should not use any contractual or other restrictions to prevent business users from accessing relevant data and should enable business users to obtain consent of their end users for such data access and retrieval, where such consent is required under Regulation (EU) 2016/679 and Directive 2002/58/EC. Gatekeepers should also ***ensure the continuous and real time*** access to these data ▌ by means of appropriate technical measures, such as for example putting in place high quality application programming interfaces ***or integrated tools for small volume business users***.

(56) The value of online search engines to their respective business users and end users increases as the total number of such users increases. ***Undertakings providing*** online search engines collect and store aggregated datasets containing information about what users searched for, and how they interacted with, the results that they were served. ***Undertakings providing*** online search engine services collect these data from searches undertaken on their own online search engine service and, where applicable, searches undertaken on the platforms of their downstream commercial partners. Access by gatekeepers to such ranking, query, click and view data constitutes an important barrier to entry and expansion, which undermines the contestability of online search engine services. Gatekeepers should therefore be obliged to provide access, on fair, reasonable and ***non- discriminatory*** terms, to these ranking, query, click and view data in relation to free and paid search generated by consumers on online search engine services to other ***undertakings providing*** such services, so that these third-party ***undertakings*** can optimise their services and contest the relevant core platform services. Such access should also be given to third parties contracted by a search engine provider, who are acting as processors of this data for that search engine. When providing access to its search data, a gatekeeper should ensure the protection of the personal data of end users***, including against possible re-identification risks,*** by appropriate means, ***such as anonymisation of such personal data,*** without substantially degrading the quality or usefulness of the data. ***The relevant data is anonymised if personal data is irreversibly altered in such a way that information does not relate to an identified or identifiable natural person or where personal data is rendered anonymous in such a manner that the data subject is not or no longer identifiable.***

(57) ***For software application stores, online search engines and online social networking services identified pursuant to Article 3 (7), gatekeepers should publish and apply general conditions of access that should be fair, reasonable and non-discriminatory. These general conditions should provide for a Union based alternative dispute settlement mechanism that should be easily accessible, impartial, independent and, free of charge for the business user, without prejudice to the business user's own cost and proportionate measures aimed at preventing the abuse of the dispute settlement mechanism by business users. The dispute settlement mechanism should be without prejudice to the right of business users to seek redress before judicial authorities in accordance with national and Union law.***

In particular gatekeepers which provide access to software application stores serve as an important gateway for business users that seek to reach end users. In view of the imbalance in bargaining power between those gatekeepers and business users of their software application stores, those gatekeepers should not be allowed to impose general conditions, including pricing conditions, that would be unfair or lead to unjustified differentiation. Pricing or other general access conditions should be considered unfair if they lead to an imbalance of rights and obligations imposed on business users or confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users or lead to a disadvantage for business users in providing the same or similar services as the gatekeeper. The following benchmarks can serve as a yardstick to determine the fairness of general access conditions: prices charged or conditions imposed for the same or similar services by other providers of software application stores; prices charged or conditions imposed by the provider of the software application store for different related or similar services or to different types of end users; prices charged or conditions imposed by the provider of the software application store for the same service in different geographic regions; prices charged or conditions imposed by the provider of the software application store for the same service the gatekeeper offers to itself. This obligation should not establish an access right and it should be without prejudice to the ability of providers of software application stores***, online search engines and online social networking services*** to take the required responsibility in the fight against illegal and unwanted content as set out in Regulation [Digital Services Act].

(57a) ***Gatekeepers can hamper the ability of business users and end users to unsubscribe from a core platform service that they have previously subscribed to. Therefore, rules should be established to avoid that gatekeepers undermine the rights of business users and end users to freely choose which core platform service they use. To safeguard free choice of business users and end users, a gatekeeper should not be allowed to make it unnecessarily difficult or complicated for business users or end users to unsubscribe from a core platform service. Closing an account or un-subscribing should not be made be more complicated than opening an account or subscribing to the same service. Gatekeepers should not demand additional fees when terminating agreements with their end users or business users. Gatekeepers should ensure that the conditions for terminating contracts are always proportionate and can be exercised without undue difficulty by end users, such as for example in relation to the reasons for termination, the notice period, or the form of such termination. This is without prejudice to national legislation applicable in accordance with the Union law laying down rights and obligations concerning conditions of termination of core platform services by end users.***

(57b) ***The lack of interoperability allows gatekeepers that provide number-independent interpersonal communications services to benefit from strong network effects, which contributes to weakening contestability. Furthermore, regardless of whether end users multi-home, gatekeepers often provide number-independent interpersonal communications services as part of their platform ecosystem, which further exacerbates entry barriers for alternative providers of these services as well as increases costs for end users to switch. Without prejudice to Directive (EU) 2018/1972 and particularly the conditions and procedures laid down in Article 61 thereof, gatekeepers should therefore ensure, free of charge and upon request, interoperability with certain basic functionalities of their number-independent interpersonal communications services that they provide to their own end users, to third party providers of such services. Gatekeepers should ensure interoperability to third party providers of number-independent interpersonal communication services that offer or intend to offer to end users and business users in the Union. To facilitate the practical implementation of such interoperability, the gatekeeper concerned should be obliged to publish a reference offer laying down the technical details and general terms and conditions of interoperability with its number-independent interpersonal communications service. The Commission may, if applicable, consult the Body of European Regulators for Electronic Communications, during proceedings pursuant to Article 7(2) in order to determine whether the reference offer that the gatekeeper intends to implement or has implemented ensures compliance with this obligation. In all cases, the gatekeeper and the requesting provider should ensure that interoperability does not undermine a high level of security and data protection in line with their obligations laid down in this Regulation and applicable EU law, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC. The obligation related to interoperability should be without prejudice to the information and choices to be made available to end users of the number-independent interpersonal communication services of the gatekeeper and the requesting provider under this Regulation and other EU law, in particular Regulation (EU) 2016/679.***

(58) To ensure the effectiveness of the obligations laid down by this Regulation, while also making certain that these obligations are limited to what is necessary to ensure contestability and tackling the harmful effects of the unfair behaviour by gatekeepers, it is important to clearly define and circumscribe them so as to allow the gatekeeper to ***fully*** comply with them, in full respect of ***applicable law, in particular*** Regulation (EU) 2016/679 and Directive 2002/58/EC, consumer protection, cyber security and product safety ***and accessibility requirements, including Directive (EU) 2019/882 and Directive (EU) 2016/2102***. The gatekeepers should ensure the compliance with this Regulation by design. The necessary measures should therefore be as much as possible and where relevant integrated into the technological design used by the gatekeepers. It may in certain cases be appropriate for the Commission, following a dialogue with the gatekeeper concerned ***and, after enabling third parties to make comments***, to further specify some of the measures that the gatekeeper concerned should adopt in order to effectively comply with obligations that are susceptible of being further specified ***or, in case of circumvention, with all obligations. In particular, such further specification should be possible where the implementation of an obligation susceptible to being further specified can be affected by variations of services within a single category of core platform services. For this purpose, there should be the*** possibility ***for the gatekeeper to request the Commission to engage in a process where the Commission can further specify some of the measures that the gatekeeper concerned should adopt in order to effectively comply with those obligations. The Commission*** should ***retain discretion in deciding if and when such further specification should be provided, while respecting equal treatment, proportionality, and the principle of good administration. In this respect, the Commission should provide the main reasons underlying its assessment, including enforcement priority setting. This process should not be used to undermine the effectiveness of this Regulation. Furthermore, this process is without prejudice to the powers of the Commission to adopt a decision establishing non-compliance with any of the obligations laid down in this*** Regulation ***by a gatekeeper, including the possibility to impose fines or periodic penalty payments.***

The Commission should be able to reopen proceedings, including where the specified measures turn out not to be effective. A reopening due to an ineffective specification adopted by decision should enable the Commission to amend the specification prospectively. The Commission should also be able to set a reasonable time period within which the specification decision may be reopened if the specified measures turn out not to be effective.

(58a) ***Within the timeframe for complying with their obligations under this Regulation, designated gatekeepers should inform the Commission, through mandatory reporting, about the measures they intend to implement or have implemented to ensure effective compliance with these obligations, including concerning compliance with Regulation (EU) 2016/679 to the extent they are relevant for compliance with the obligations provided under this Regulation, and which should allow the Commission to fulfil its duties under this Regulation, .***

In addition, a clear and comprehensible non-confidential version of such information should be made publicly available while taking into account the legitimate interest of designated gatekeepers in the protection of their business secrets and other confidential information. This non-confidential publication should enable third parties to assess whether the designated gatekeepers comply with the obligations laid down in this Regulation. Such reporting should be without prejudice to any enforcement action by the Commission at any time following the reporting. The Commission shall publish the non-confidential report, as well as all other public information based on information obligations from this Regulation, online, in order to ensure accessibility of such information in usable and comprehensive manner, in particular for SMEs.

(58b) Given the substantial economic power of gatekeepers, it is important that these obligations are effectively applied without being circumvented. To that end, the obligations in question should apply to any practices by a gatekeeper, irrespective of its form and irrespective of whether it is of a contractual, commercial, technical or any other nature, insofar as a practice corresponds to the type of practice that is the subject of one of the obligations of this Regulation. The gatekeepers should not engage in behaviour that would undermine the effectiveness of the prohibitions and obligations laid down in this Regulation. Such behaviour includes the design used by the gatekeeper, the presentation of end-user choices in a non-neutral manner, or using the structure, function or manner of operation of a user interface or a part thereof to subvert or impair user autonomy, decision-making, or choice. Furthermore, the gatekeeper should not be allowed to engage in any behaviour undermining interoperability as required under this Regulation, such as for example by using unjustified technical protection measures, discriminatory terms of service, unlawfully claiming a copyright on application programming interfaces or providing misleading information. Gatekeepers should not be allowed to circumvent their designation by artificially segmenting, dividing, subdividing, fragmenting or splitting this core platform service to circumvent the quantitative thresholds laid down in this regulation.

(59) As an additional element to ensure proportionality, gatekeepers should be given an opportunity to request the suspension, to the extent necessary, of a specific obligation in exceptional circumstances that lie beyond the control of the gatekeeper, such as for example an unforeseen external shock that has temporarily eliminated a significant part of end user demand for the relevant core platform service, where compliance with a specific obligation is shown by the gatekeeper to endanger the economic viability of the Union operations of the gatekeeper concerned. ***The Commission should identify the exceptional circumstances justifying the suspension and review it on a regular basis to assess whether the conditions for granting it are still viable.***

(60) In exceptional circumstances justified on the limited grounds of public health or public security, ***as laid down in Union law and interpreted by the Court of Justice,*** the Commission should be able to decide that the obligation concerned does not apply to a specific core platform service. ***A harm to*** these public interests can indicate that the cost to society as a whole of enforcing a certain obligation would in a certain exceptional case be too high and thus disproportionate. ***Where appropriate the Commission should be able*** to facilitate compliance ***by assessing whether a*** limited ***and duly justified*** suspension ***or*** exemption possibilities ***is justified. This*** should ensure the proportionality of the obligations in this Regulation without undermining the intended ex ante effects on fairness and contestability. ***Where such an exemption is granted, the Commission should review its decision every year.***

(60a) The obligations should only be updated after a thorough investigation on the nature and impact of specific practices that may be newly identified, following an in-depth investigation, as unfair or limiting contestability in the same manner as the unfair practices laid down in this Regulation while potentially escaping the scope of the current set of obligations. The Commission should be able to launch an investigation with a view to determining whether the existing obligations would need to be updated, either on its own initiative or following a justified request of at least three Member States. When presenting such justified requests Member States 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. Where, following a market investigation, the Commission deems it necessary to modify essential elements of the present Regulation, such as the inclusion of new obligations that depart from the same contestability or fairness issues addressed by this Regulation, the Commission should advance a proposal to amend the Regulation.

(60b) To ensure the effectiveness of the review of gatekeeper status as well as the possibility to adjust the list of core platform services provided by a gatekeeper, the gatekeepers should inform the Commission of all of their intended acquisitions, prior to their implementation, of other undertakings providing core platform services or any other services provided within the digital sector or other services that enable the collection of data. Such information should not only serve the review process mentioned above, regarding the status of individual gatekeepers, but will also provide information that is crucial to monitoring broader contestability trends in the digital sector and can therefore be a useful factor for consideration in the context of the market investigations foreseen by this Regulation.

Furthermore, the Commission should inform Member States of such information, given the possibility of using the information for national merger control purposes and as under certain circumstances the competent national authority may refer those acquisitions to the Commission for the purposes of merger control. The Commission should also publish annually a list of acquisitions of which it has been informed by gatekeepers. To ensure the necessary transparency and usefulness of such information for different purposes foreseen by this Regulation, gatekeepers should provide at least information about the undertakings concerned by the concentration, their Union and worldwide annual turnover, their field of activity, including activities directly related to the concentration, the transaction value or an estimation thereof, a summary of the concentration, including its nature and rationale, as well as a list of the Member States concerned by the operation.

(61) The data protection and privacy interests of end users are relevant to any assessment of potential negative effects of the observed practice of gatekeepers to collect and accumulate large amounts of data from end users. Ensuring an adequate level of transparency of profiling practices employed by gatekeepers***, including, but not limited to, profiling within the meaning of Article 4(4) of Regulation (EU) 2016/679,*** facilitates contestability of core platform services***. Transparency puts*** external pressure on gatekeepers ***not to make*** deep consumer profiling the industry standard, given that potential entrants or ***start- ups*** cannot access data to the same extent and depth, and at a similar scale. Enhanced transparency should allow other ***undertakings providing*** core platform services to differentiate themselves better through the use of superior privacy ***guarantees***. To ensure a minimum level of effectiveness of this transparency obligation, gatekeepers should at least provide a description of the basis upon which profiling is performed, including whether personal data and data derived from user activity ***in line with Regulation (EU) 2016/679*** is relied on, the processing applied, the purpose for which the profile is prepared and eventually used, the ***duration of the profiling, the*** impact of such profiling on the gatekeeper's services, and the steps taken to ***effectively*** enable end users to be aware of the relevant use of such profiling, as well as ***steps*** to seek their consent ***or provide them with the possibility of denying or withdrawing consent.***

The Commission should transfer the audited description to the European Data Protection Board to inform the enforcement of EU data protection rules.

The Commission should be empowered to develop the methodology and process of the audit, in consultation with the European Data Protection Supervisor, the European Data Protection Board, civil society and experts, in line with Regulation 2018/1725 and comitology rules.

(62) In order to ensure the full and lasting achievement of the objectives of this Regulation, the Commission should be able ▌ to assess whether ***an undertaking providing*** core platform services should be designated as a ▌ gatekeeper without meeting the quantitative thresholds laid down in this Regulation; whether systematic non-compliance by a gatekeeper warrants imposing additional remedies; ***whether more services within the digital sector should be added to the list of core platform services; and whether*** additional practices that are similarly unfair and limiting the contestability of digital markets ***need to be investigated*** . Such assessment should be based on market investigations to be ***carried out*** in an appropriate timeframe, by using clear ▌ procedures and deadlines, ▌ in order to support the ex ante effect of this Regulation on contestability and ▌ fairness in the digital sector, and to provide the requisite degree of legal ▌ certainty ▌

(63) ***The Commission should be able to find,*** following a market investigation, ***that*** an undertaking providing a core platform service ***fulfils*** all of the overarching qualitative criteria for being identified as a gatekeeper. ***The undertaking*** should then, in principle, comply with all of the relevant obligations laid down by this Regulation. However, for gatekeepers that have been designated by the Commission as likely to enjoy an entrenched and durable position in the near future, the Commission should only impose those obligations that are necessary and appropriate to prevent that the gatekeeper concerned achieves an entrenched and durable position in its operations. With respect to such emerging gatekeepers, the Commission should take into account that this status is in principle of a temporary nature, and it should therefore be decided at a given moment whether such ***an undertaking providing*** core platform services should be subjected to the full set of gatekeeper obligations because it has acquired an entrenched and durable position, or ***the*** conditions for designation are ultimately not met and therefore all previously imposed obligations should be waived.

(63a) When preparing non-confidential summaries for publication in order to effectively enable interested third parties to provide comments, the Commission should give due regard to the legitimate interest of undertakings in the protection of their business secrets and other confidential information.

(64) The Commission should investigate and assess whether additional behavioural, or, where appropriate, structural remedies are justified, in order to ensure that the gatekeeper cannot frustrate the objectives of this Regulation by systematic non-compliance with one or several of the obligations laid down in this Regulation***. This would be the case where the Commission has issued against a*** gatekeeper ***at least three non-compliance decisions within the period of eight years, which can concern different core platform services and different obligations laid down in this Regulation, and*** if the gatekeeper ***has maintained, extended or further strengthened its impact*** in the internal market ▌ , ***the*** economic dependency of ***its*** business users and end users on the gatekeeper's core platform services ***or the entrenchment of its position. A gatekeeper should be deemed to have maintained, extended or*** strengthened ***its gatekeeper position where despite the enforcement actions taken by the commission, the undertaking still holds or has further consolidated or entrenched its importance as a gateway for business users to reach end users***. The Commission should ▌ in such cases have the power to impose any remedy, whether behavioural or structural, having due regard to the principle of proportionality. ***In this context, the Commission should have the power to prohibit, 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, during a limited time-period, for the gatekeeper to enter into a concentration regarding those core platform services or the other services provided in the digital sector or services enabling the collection of data that are affected by the systematic non-compliance***.

In order to enable effective involvement of third parties and the possibility to test remedies before ***its application, the Commission should publish a detailed non confidential summary of the case and the measures to be taken.***

The Commission should be able to reopen proceedings, including where ***the specified remedies turn out not to be effective. A reopening due to ineffective remedies adopted by decision should enable the Commission to amend the remedies prospectively. The Commission should also be able to set a reasonable time period within which the remedies decision may be reopened if the remedies turn out not to be effective***.

(65) The services ***in the digital sector and the types of practices relating to*** these ***services*** can change quickly and to a significant extent. To ensure that this Regulation remains up to date and constitutes an effective and holistic regulatory response to the problems posed by gatekeepers, it is important to provide for a regular review of the lists of core platform services as well as of the obligations provided for in this Regulation. This is particularly important to ensure that behaviour that may limit the contestability of core platform services or is unfair is identified. While it is important to conduct a review on a regular basis, given the dynamically changing nature of the digital sector, in order to ensure legal certainty as to the regulatory conditions, any reviews should be conducted within a reasonable and appropriate time-frame. Market investigations should also ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend this Regulation in order to ***review,*** expand, or further detail, the lists of core platform services. They should equally ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend the obligations laid down in this Regulation or whether it should adopt a delegated act updating such obligations.

(65a) With regard to conduct implemented by gatekeepers that does not fall under the obligations set out in this Regulation, the Commission should have the possibility to open a market investigation into new services and new practices for the purposes of identifying whether the obligations set out in this Regulation are to be supplemented by means of a delegated act falling within the scope detailed by the Regulation for such delegated acts, or by presenting a proposal to amend this Regulation. This is without prejudice to the possibility for the Commission to, in appropriate cases, open proceedings under Article 101 or 102 of the TFEU. Such proceedings should be conducted in accordance with Council Regulation (EC) No 1/2003[1].

In case of urgency due to the risk of serious and irreparable damage to competition, the Commission should consider adopting interim measures in accordance with Article 8 of Regulation (EC) No 1/2003.

(66) In the event that gatekeepers engage in behaviour that is unfair or that limits the contestability of the core platform services that are already designated under this Regulation but without these behaviours being explicitly covered by the obligations, the Commission should be able to update this Regulation through delegated acts. Such updates by way of delegated act should be subject to the same investigatory standard and therefore following a market investigation. The Commission should also apply a predefined standard in identifying such behaviours. This legal standard should ensure that the type of obligations that gatekeepers may at any time face under this Regulation are sufficiently predictable.

(67) Where, in the course of ▌ an investigation into ***systematic*** non-compliance, a gatekeeper offers commitments to the Commission, the latter should be able to adopt a decision making these commitments binding on the gatekeeper concerned, where it finds that the commitments ensure effective compliance with the obligations of this Regulation. This decision should also find that there are no longer grounds for action by the Commission ***as regards the systematic non-compliance under investigation. In assessing whether the commitments offered by the gatekeeper are sufficient to ensure effective compliance with the obligations under this Regulation, the Commission may take into account tests undertaken by the gatekeeper to demonstrate the effectiveness of the offered commitments in practice. The Commission should verify that the commitments decision is fully respected and reaches its objectives, and should be entitled to reopen the decision if it finds that the commitments are not effective***.

(68) In order to ensure effective implementation and compliance with this Regulation, the Commission should have strong investigative and enforcement powers, to allow it to investigate, enforce and monitor the rules laid down in this Regulation, while at the same time ensuring the respect for the fundamental right to be heard and to have access to the file in the context of the enforcement proceedings. The Commission should dispose of these investigative powers also for the purpose of carrying out market investigations***, including*** for the purpose of updating and reviewing this Regulation.

(69) The Commission should be empowered to request information necessary for the purpose of this Regulation ▌. In particular, the Commission should have access to any relevant documents, data, database, algorithm and information necessary to open and conduct investigations and to monitor the compliance with the obligations laid down in this Regulation, irrespective of who possesses the documents, data or information in question, and regardless of their form or format, their storage medium, or the place where they are stored.

(70) The Commission should be able to directly request that undertakings or association of undertakings provide any relevant evidence, data and information. In addition, the Commission should be able to request any relevant information from ***competent authorities*** within the Member State, or from any natural person or legal person for the purpose of this Regulation. When complying with a decision of the Commission, undertakings are obliged to answer factual questions and to provide documents.

(71) The Commission should also be empowered to undertake ▌ inspections ***of any undertaking or association of undertakings*** and to interview any persons who may be in possession of useful information and to record the statements made.

(71a) Interim measures can be an important tool to ensure that, while an investigation is ongoing, the infringement being investigated does not lead to serious and irreparable damage for business users or end users of gatekeepers. This tool is important to avoid developments that could be very difficult to reverse by a decision taken by the Commission at the end of the proceedings. The Commission should therefore have the power to impose interim measures by decision in the context of proceedings opened in view of the possible adoption of a decision of non-compliance. This power should apply in cases where the Commission has made a prima facie finding of infringement of obligations by gatekeepers and where there is a risk of serious and irreparable damage for business users or end users of gatekeepers. A decision imposing interim measures should only be valid for a specified period, either until the conclusion of the proceedings by the Commission, or for a fixed time period which can be renewed insofar as it is necessary and appropriate.

(72) The Commission should be able to take the necessary actions to monitor the effective implementation ***of*** and compliance with the obligations laid down in this Regulation. Such actions should include the ability of the Commission to appoint independent external experts, such as ▌ auditors to assist the Commission in this process, including where applicable from competent ***authorities of the Member States***, such as data or consumer protection authorities. ***When appointing auditors, the Commission should ensure sufficient rotation.***

(72a) *The coherent, effective and complementary enforcement of available legal instruments applied to gatekeepers requires cooperation and coordination between the Commission and national authorities within the remit of their competences. The Commission and national authorities should cooperate and coordinate their actions necessary for the enforcement of the available legal instruments applied to gatekeepers within the meaning of this Regulation and respect the principle of sincere cooperation laid down in Article 4 of the TFEU. The support by* ***national*** *authorities may include providing the Commission with all necessary information in their possession or assisting, upon request, the Commission with the exercise of its powers in order for the Commission to carry out the duties assigned to it by this Regulation.*

(72b) ***The Commission is the sole authority empowered to enforce this Regulation. In order to support the Commission, Member States may empower competent authorities enforcing competition rules to conduct investigative measures into possible infringements of Articles 5 or 6 or 6a of this Regulation. This may in particular be relevant for cases where it cannot be determined from the outset whether a gatekeeper's behaviour may infringe this Regulation, competition rules which the competent authority is empowered to enforce or both. The competent authority enforcing competition rules should be able to report on its findings on possible infringements of Articles 5, 6, and 6a to the Commission in view of the Commission opening proceedings to investigate any non-compliance as the sole enforcer of the provisions laid down in this Regulation. The Commission shall have full discretion to decide on the opening of these proceedings. In order to avoid overlapping investigations under this Regulation, the competent authority concerned should inform the Commission before taking its first investigative measure into a possible infringement of Article 5, 6 or 6a of this Regulation. The competent national authorities should also closely cooperate and coordinate with the Commission when applying national competition rules against gatekeepers, including with regard to the setting of fines. To this end, they should inform the Commission when initiating proceedings based on national competition rules against gatekeepers as well as prior to imposing obligations on gatekeepers in such proceedings. In order to avoid duplication, information of the draft decision pursuant to Article 11 of Council Regulation (EC) No 1/2003, where applicable, may serve as notification under this regulation.***

(72c) ***In order to safeguard the harmonized application and enforcement of this Regulation it is important to ensure that national authorities, including national courts, have all necessary information to ensure that their decisions do not run counter to a decision adopted by the Commission under this Regulation.*** *National Courts should be allowed to ask the Commission to send them information or opinions on questions concerning the application of this Regulation. At the same time, the Commission should be able to submit oral or written observations to courts of the Member States.* ***This is without prejudice to the ability of national courts to request a preliminary ruling under Article 267 of the TFEU.***

(73) Compliance with the obligations imposed under this Regulation should be enforceable by means of fines and periodic penalty payments. To that end, appropriate levels of fines and periodic penalty payments should also be laid down for non-compliance with the obligations and breach of the procedural rules subject to appropriate limitation periods***, in accordance with the principles of proportionality and ne bis in idem. The Commission and the relevant national authorities*** should ***coordinate in order to ensure that the aforementioned principles are respected. In particular, the Commission should take into account any fines and penalties imposed on the same legal person for the same facts through a final decision in proceedings relating to an infringement of other national or EU rules, so as to ensure that the overall*** fines and ***penalties imposed correspond to the seriousness of the offences committed***.

(74) In order to ensure effective recovery of fines imposed on associations of undertakings for infringements that they have committed, it is necessary to lay down the conditions on which the Commission may require payment of the fine from the members of the association where the association is not solvent.

(75) In the context of proceedings carried out under this Regulation, the ***undertaking*** concerned should be accorded the [redacted] right to be heard by the Commission and the decisions taken should be widely publicised. While ensuring [redacted] the rights to good administration [redacted] , the right of access to the file and the right to be heard, it is essential ***to protect*** confidential information [redacted] . Furthermore, while respecting the confidentiality [redacted] of the information, the Commission should ensure that any information relied on for the purpose of the decision is disclosed to an extent that allows the addressee of the decision to understand the facts and considerations that led up to the decision. ***It is also necessary to ensure that the Commission only uses information collected pursuant to this Regulation for the purposes of this Regulation, except where specifically envisaged otherwise.*** Finally, under certain conditions certain business records, such as communication between lawyers and their clients, may be [redacted] considered confidential if the relevant conditions are met.

(75a) In order to ensure coherence and effective complementarity in the implementation of this Regulation and of other sectoral regulations applying to gatekeepers, the Commission should benefit from the expertise of a dedicated high-level group. The High-Level Group may also assist the Commission by means of advice, expertise and recommendations, when relevant, in general matters relating to the implementation or enforcement of this Regulation. The High-Level Group should be composed of the relevant European bodies and networks, and its composition should ensure a high level of expertise and a geographical balance. Members of the High-Level Group should regularly report to the bodies and networks they represent regarding the tasks performed in the context of the group, and consult them in that regard.

(75b) Decisions taken by the Commission under this Regulation are subject to review by the Court of Justice in accordance with the TFEU. In accordance with Article 261 thereof, the Court of Justice should have unlimited jurisdiction in respect of fines and penalty payments.

(76) In order to ensure uniform conditions for the implementation of Articles ***1, 3, 5, 6, 6a, 7, 8, 9, 9a,*** 12, 13, 15, 16, 17, ▌ 22, 23, 25 and 30, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance ▌ with Regulation (EU) ***No 182/2011*** of the European Parliament and of the Council[1].

(76a) The examination procedure should be used for the adoption of an implementing act on the practical arrangements for the cooperation and coordination between the Commission and Member States. The advisory procedure should be used for the remaining implementing acts envisaged by this Regulation. This is justified by the fact that these remaining implementing acts consider practical aspects of the procedures laid down in this Regulation, such as form, content and other details of various procedural steps as well as the practical arrangements of different procedural steps, such as, for example, extension of procedural deadlines or right to be heard. The advisory procedure will also be followed for individual decisions adopted under this Regulation.

(76b) The Commission may develop guidelines to provide further guidance on different aspects of this Regulation or to assist undertakings providing core platform services in the implementation of the obligations under this Regulation. Such guidance may in particular be based on the experience that the Commission obtains through the monitoring of compliance with this Regulation. The issuing of any guidelines under this Regulation is a prerogative and at the sole discretion of the Commission and should not be considered as a constitutive element to ensure compliance with the obligations under this Regulation by the undertakings or association of undertakings concerned.

(76c) The implementation of some of the gatekeepers' obligations such as those related to data access, data portability or interoperability could be facilitated by the use of technical standards. In this respect, the Commission may, where appropriate and necessary, request European standardisation bodies to develop them.

(77) In accordance with ***Regulation 182/2011, each Member State*** should be ***represented in the advisory committee and decide on the composition of its delegation. Such delegation can include inter alia experts from the competent authorities within the*** Member States ***which hold the relevant expertise for a specific issue presented to the advisory committee***.

(77a) In order to ensure contestable and fair markets in the digital sector across the Union where gatekeepers are present, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of amending the methodology for determining whether the quantitative thresholds regarding active end users and active business users for the designation of gatekeepers are met, which is contained in an Annex of this Regulation, in respect of further specifying the additional elements of the methodology not falling in this Annex for determining whether the quantitative thresholds regarding the designation of gatekeepers are met, and in respect of supplementing the existing obligations laid down in this Regulation where, based on a market investigation the Commission has identified the need for updating the obligations addressing practices that limit the contestability of core platform services or are unfair and the considered update falls within the scope detailed by the Regulation for such delegated acts. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016[1]***.***

In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(77b) Whistle-blowers can bring new information to the attention of competent authorities which may help the competent authorities detect infringements of this Regulation and enable them to impose penalties. It should be ensured that adequate arrangements are in place to enable whistle-blowers to alert the competent authorities to actual or potential infringements of this Regulation and to protect the whistle-blowers from retaliation. For that purpose, it should be provided in this Regulation that Directive (EU) 2019/1937 of the European Parliament and of the Council (*) is applicable to the reporting of breaches of this Regulation and to the protection of persons reporting such breaches.

(77c) To enhance legal certainty, the applicability, pursuant to this Regulation, of Directive (EU) 2019/1937 to reports of breaches of this Regulation and to the protection of persons reporting such breaches should be reflected in Directive (EU) 2019/1937. The Annex to Directive (EU) 2019/1937 should therefore be amended accordingly. It is for the Member States to ensure that that amendment is reflected in their transposition measures adopted in accordance with Directive (EU) 2019/1937, although the adoption of national transposition measures is not a condition for the applicability of Directive (EU) 2019/1937 to the reporting of breaches of this Regulation and to the protection of reporting persons from the date of application of this Regulation.

(77d) Consumers should be entitled to enforce their rights in relation to the obligations imposed on gatekeepers under this Regulation through representative actions in accordance with Directive (EU) 2020/1828 of the European Parliament and of the Council[5]*. For that purpose, it should be provided in this Regulation that Directive (EU) 2020/1828 is applicable to the representative actions brought against infringements by gatekeepers of provisions of this Regulation that harm or may harm the collective interests of consumers. The annex to Directive (EU) 2020/1828 should therefore be amended accordingly. It is for the Member States to ensure that that amendment is reflected in their transposition measures adopted in accordance with Directive (EU) 2020/1828, although the adoption of national transposition measures in this regard is not a condition for the applicability of Directive (EU) 2020/1828 to those representative actions.*

The applicability of Directive (EU) 2020/1828 to the representative actions brought against infringements by gatekeepers of provisions of this Regulation that harm or may harm the collective interests of consumers should start from the date of application of** Member States' laws, regulations and administrative provisions necessary to transpose **that Directive, or from the date of application of this Regulation, whichever is the latest.

[5] ***Directive (EU) 2020/1828 on Representative Actions for the Protection of the Collective Interests of Consumers (OJ L 409, 4.12.2020, p. 1–27)***

(78) The Commission should periodically evaluate this Regulation and closely monitor its effects on the contestability and fairness of commercial relationships in the online platform economy, in particular with a view to determining the need for amendments in light of relevant technological or commercial developments. This evaluation should include the regular review of the list of core platform services and the obligations addressed to gatekeepers**,** as well as enforcement of these, in view of ensuring that digital markets across the Union are contestable and fair. ***In this context, the Commission should also evaluate the scope of Article X.***

In order to obtain a broad view of developments in the sector, the evaluation should take into account the experiences of Member States and relevant stakeholders. The Commission may in this regard also consider the opinions and reports presented to it by the Observatory on the Online Platform Economy that was first established by Commission Decision C(2018)2393 of 26 April 2018. Following the evaluation, the Commission should take appropriate measures. The Commission should to maintain a high level of protection and respect for the common EU rights and values, particularly equality and non-discrimination, as an objective when conducting the assessments and reviews of the practices and obligations provided in this Regulation.

(78a) Without prejudice to the budgetary procedure and through existing financial instruments, adequate human, financial and technical resources should be allocated to the Commission to ensure that it can effectively perform its duties and exercise its powers in respect of the enforcement of this Regulation.

(79) The objective of this Regulation is to ensure a contestable and fair digital sector in general and core platform services in particular, with a view to promoting innovation, high quality of digital products and services, fair and competitive prices, as well as a high quality and choice for end users in the digital sector. This cannot be sufficiently achieved by the Member States, but can only, by reason of the business model and operations of the gatekeepers and the scale and effects of their operations, be fully achieved at Union level. The Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(79a) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation 2018/1725 and delivered an opinion on 10 February 2021[6].

(79b) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular Articles 16, 47 and 50 thereof. Accordingly, this Regulation should be interpreted and applied with respect to those rights and principles.

6 ***OJ C 147, 26.4.2021, p. 4.***

HAVE ADOPTED THIS REGULATION:

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 contestable and fair markets ***for all businesses to the benefit of both business users and end users*** in the digital sector across the Union where gatekeepers are present.

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:

   (a) related to electronic communications networks as defined in point (1) of Article 2 of Directive (EU) 2018/1972 of the European Parliament and of the Council[7];

   (b) related to electronic communications services as defined in point (4) of Article 2 of Directive (EU) 2018/1972 other than those related to ***number-independent*** interpersonal communication services as defined in point ***(7)*** of Article 2 of that Directive.

[7] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (OJ L 321, 17.12.2018, p. 36).

4. With regard to interpersonal communication services 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 Directive (EU) 2018/1972.

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

6. This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of: national ***competition*** rules prohibiting anticompetitive agreements, decisions by associations of undertakings, concerted practices and abuses of dominant positions; national competition rules prohibiting other forms of unilateral conduct insofar as they are applied to undertakings other than gatekeepers or amount to imposing additional obligations on gatekeepers; ***and*** Council Regulation (EC) No 139/2004[1] and national rules concerning merger control [redacted] [8] .

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

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8 [redacted]

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;

I online social networking services;

(d) video-sharing platform services;

(e) number-independent interpersonal communication services;

(f) operating systems;

(fa) Web browsers;

(fb) Virtual assistants;

(g) cloud computing services;

(h) ***online*** advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by ***an undertaking providing*** any of the core platform services listed in points (a) to (g);

(3) ‘Information society service’ means any service within the meaning of point (b) of Article 1(1) 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 services as defined in point ***(2)*** of Article 2 of Regulation (EU) 2019/1150;

(6) ‘Online search engine’ means a digital service as defined in point ***(5)*** of Article 2 of Regulation (EU) 2019/1150;

(7) ‘Online social networking service’ means a platform that enables end users to connect, share, discover and communicate with each other across multiple devices and, in particular, via chats, posts, videos and recommendations;

(8) ‘Video-sharing platform service’ means a service as defined in point (aa) of Article 1(1) of Directive (EU) 2010/13[9];

(9) ‘Number-independent interpersonal communications service’ means a service as defined in point ***(7)*** of Article 2 of Directive (EU) 2018/1972;

(10) ‘Operating system’ means a system software which controls the basic functions of the hardware or software and enables software applications to run on it;

(10a) 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.

[9] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

(10b) ***Virtual assistants' means software that can process demands, tasks or questions including based on audio, visual, written input, gestures or motions, and based on those demands, tasks or questions provides access to other services or controls connected/physical devices.***

(11) 'Cloud computing services' means a digital service as defined in point ***(19)*** of Article 4 of Directive (EU) 2016/1148 of the European Parliament and of the Council[10];

(12) 'Software application stores' means a type of online intermediation services, which is focused on software applications as the intermediated product or service;

(13) 'Software application' means any digital product or service that runs on an operating system;

(14) (***deleted***)

(14a) ***'Payment services' means a service as defined in Article 4(3) of Directive (EU) 2015/2366 ;***

(14b) ***"Technical service supporting payment service" means a service as defined in Article 3(j) of Directive (EU) 2015/2366 ;***

(14c) ***Payment systems for in-app purchases" means an application, service or user interface to facilitate purchases of digital content or digital services within an app (including content, subscriptions, features or functionality) and the payments for such purchases.***

(15) '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;

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10 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).

(16) ‘End user’ means any natural or legal person using core platform services other than as a business user;

(17) ‘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;

(18) ‘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 assistant or*** online search engines, ▌ whatever the technological means used for such presentation, organisation or communication ***and irrespectively whether only one result is presented or communicated.***

(18a) ‘Search results’ means any information in any format, including texts, graphics, voice or other output, returned in response and related to a search query, irrespective of whether the information is an unpaid result, a paid result, a direct answer or any product, service or information offered in connection with, or displayed along with, or partly or entirely embedded in, the organic results;

(19) ‘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;

(20) ‘Personal data’ means any information as defined in point ***(1)*** of Article 4 of Regulation (EU) 2016/679;

(21) ‘Non-personal data’ means data other than personal data as defined in point ***(1)*** of Article 4 of Regulation (EU) 2016/679;

(22) ‘Undertaking’ means all linked enterprises or connected undertakings that form a group through the direct or indirect control of an enterprise or undertaking by another and that are engaged in an economic activity, regardless of their legal status and the way in which they are financed;

(23) ‘Control’ means the possibility of exercising decisive influence on an undertaking, as understood in ***Article 3(2) of*** Regulation (***EC***) No 139/2004***;***

(23a) ‘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.

(23b) ‘Turnover’ means the amount derived by an undertaking as defined in Article 5(1) of Regulation (EC) No 139/2004;

(23c) ‘Profiling’ means profiling as defined in Article 4 point (4) of Regulation (EU) 2016/679;

(23d) ‘Consent’ means consent as defined in Article 4 point (11) of Regulation (EU) 2016/679;

(23e) ‘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 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

   I 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:

   (a) the requirement in 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;

   (b) ▌ the requirement in paragraph 1 point (b) where it provides a core platform service that 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 in the last financial year***. Monthly active end users and yearly active business users shall be identified and calculated taking into account the methodology and indicators set out in the Annex to this Regulation***;

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I the requirement in paragraph 1 point I where the thresholds in point (b) were met in each of the last three financial years.

3. ▌ Where ***an undertaking providing*** core platform ***service*** meets all the thresholds in paragraph 2, it shall notify the Commission thereof ***without delay and in any case*** within ***two*** months after those thresholds are satisfied 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 point (b) ***and (c), such undertaking shall notify the Commission thereof within two 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 19 all the relevant information that is required for*** the Commission ***to designate an undertaking concerned as gatekeeper*** pursuant to paragraph 4***, the Commission shall 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 pursuant to second subparagraph of this paragraph or after the expiry of the deadline referred to in the second subparagraph of this paragraph, the Commission shall apply the procedure set out in paragraph 4.

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

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

4bis

Where the Commission considers that the arguments submitted by the undertaking providing core platform services are not sufficiently substantiated because they do not manifestly put into question the presumption in Article 3(2), it may reject those arguments within the time limit referred to in paragraph 4 without applying the procedure laid down in Article 15(3).

Where the undertaking presents such sufficiently substantiated arguments, manifestly putting into question the presumption in Article 3(2), the Commission may, notwithstanding paragraph 4, within the time limit referred to in paragraph 4, open the procedure laid down in Article 15(3).

If the Commission concludes that the undertaking was not able to demonstrate that the relevant core platform services it provides does not satisfy the requirements of paragraph 1, it shall designate the undertaking as gatekeeper in accordance with the procedure of Article 15(3).

5. The Commission is empowered to adopt delegated acts in accordance with Article 37 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 ***the methodology*** to market and technological developments where necessary**.**

5a. The Commission is empowered to adopt delegated acts in accordance with Article 37 to amend this Regulation by updating the methodology and the list of indicators set out in the Annex to this Regulation.

6. The Commission ***shall designate*** as a gatekeeper, in accordance with the procedure laid down in Article 15, 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 of paragraph 2 ***of this Article***.

For that purpose, the Commission shall take into account ***some or all of*** the following elements***, insofar as relevant for the undertaking under consideration***:

(a) the size, including turnover and market capitalisation, operations and position of the ***undertaking providing*** core platform services;

(b) the number of business users ***using*** the core platform service to reach end users and the number of end users;

I network effects and data driven advantages, in particular in relation to the ***undertaking***'s access to and collection of personal and non-personal data or analytics capabilities;

(d) scale and scope effects the ***undertaking*** benefits from, including with regard to data ***and including, where relevant, with regard 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***;

(ec) a conglomerate corporate structure or vertical integration of the undertaking providing core platform services, for instance providing these undertakings with the ability to cross subsidise, combine data from different sources or leverage their position;

(f) other structural ***business or services*** characteristics.

In conducting its assessment, the Commission shall take into account foreseeable developments of these elements ***including any planned concentrations involving another provider of core platform services or of any other services provided in the digital sector***.

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Where the ***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 the failure persists after the ***undertaking*** has been invited to comply within a reasonable time-limit and to submit observations, the Commission shall be entitled to designate that ***undertaking*** as a gatekeeper based on facts available.

7. For each ***undertaking designated as gatekeeper*** pursuant to paragraph 4 or paragraph 6, the Commission shall ***list in the designation decision*** the relevant core platform services that are provided within that same undertaking and which individually serve as an important gateway for business users to reach end users as referred to in paragraph ***1 point (b)***.

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

Article 4

Review of the status of gatekeepers

1. ▌ The Commission may***,*** upon request or ***on*** its own initiative reconsider, amend or repeal at any moment a 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 decision was based;

(b) the decision was based on incomplete, incorrect or misleading information ▌ .

2. The Commission shall regularly, and at least every ***three*** years, review whether the designated gatekeepers continue to satisfy the requirements laid down in Article 3(1), ***and at least every year*** whether new ***undertakings providing*** core platform services satisfy those requirements. The regular review shall also examine whether the list of core platform services of the gatekeeper***, which individually serve as an important gateway as referred to in Article 3(1) point (b)*** needs to be adjusted. ***The review shall have no suspending effect on the gatekeeper's obligations.***

Where the Commission, on the basis of ***the*** review 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 its previous*** decision ***designating the undertaking providing core platforms services as a gatekeeper***.

3. The Commission shall publish and update ***a*** list of ***undertakings designated as*** 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

In respect of each of its core platform services identified ***in the designation decision*** pursuant to Article 3(7), a gatekeeper shall:

(a) ***not (i) process for the purpose of providing advertising services personal data from end users using services of third-parties that make use of core platform services of the gatekeeper, (ii) combine*** personal data ***from the relevant*** core platform ***service*** with personal data from any ***further core platform services or*** other services offered by the gatekeeper or with personal data from third-party services, ***(iii) cross-use personal data from the relevant core platform service in other services offered separately by the gatekeeper, including other core platform services, and vice-versa and (iv) 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 provided consent ▌ in the sense***of Article 4(11) and Article 7*** of Regulation (EU) 2016/679. ***Where that consent 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 is without prejudice to the possibility of the gatekeeper to rely on Article 6(1) points (c), (d) and (e) of Regulation (EU) 2016/679, where applicable.***

(b) ***refrain from applying obligations that 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;

I allow business users ***free of charge to communicate and*** promote offers ***including under different conditions*** to end users acquired via the core platform service ***or through other channels***, and to conclude contracts with these end users regardless of whether for that purpose they use the core platform services of the gatekeeper ▌

(ca) allow end users to access and use, through the core platform services of the gatekeeper, content, subscriptions, features or other items by using the software application of a business user, including where these items have been acquired by the end users from the relevant business user without using the core platform services of the gatekeeper;

(d) refrain from ***directly or indirectly*** preventing or restricting 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,*** relating to any practice of gatekeepers***. This is without prejudice to the right of business users and gatekeepers to lay down in their agreements the terms of use of lawful complaint-handling mechanisms***;

(e) refrain from requiring business users ***or end users*** to use, ***and in the case of business users also to*** offer**,** or interoperate with**,** an identification service***, web browser engine, payment services or technical services which support the provision of payment services such as payment systems for in-app purchases,*** of the gatekeeper in the context of services offered by the business users using the core platform services of that gatekeeper;

(f) refrain from requiring business users or end users to subscribe to or register with any ***further*** core platform services *identified pursuant to Article 3**(7)** or which meets 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 their core platform services identified pursuant to that Article;

(g) Provide ***each advertiser*** to which it supplies ***digital*** advertising services, ***or third parties authorised by advertisers, upon the advertiser's*** request, with ***free of charge*** information ***on a daily basis,*** concerning ***each advertisement placed by the advertiser, regarding (i)*** the price ***and fees*** paid by ***that*** advertiser***, including any deductions and surcharges, for each of the relevant advertising services provided by the gatekeeper, (ii) the*** remuneration ***received by*** the publisher, ***including any deductions and surcharges, with the publisher's consent; and (iii) the measure on which each of the prices and remunerations are calculated. In case some publishers do not provide their consent to the sharing of information, provide each advertiser with free of charge information concerning the daily average remuneration received by those publishers, including any deductions and surcharges,*** for the ***relevant advertisements.***

Provide each publisher to which it supplies digital 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 (i) the remuneration received and fees paid by that publisher, including any deductions and surcharges, for each of the relevant advertising services provided by the gatekeeper***, (ii) the price paid by the advertiser, including any deductions and surcharges, with the advertiser's consent; and (iii) the measure on which each of the prices and remunerations are calculated. In case some advertisers do not provide their consent to the sharing of information, provide each publisher with free of charge information concerning the daily average price paid by those advertisers, including any deductions and surcharges, for the relevant advertisements***.

Article 6

Obligations for gatekeepers susceptible of being further specified ***under Article 7***

1. In respect of each of its core platform services identified ***in the designation decision*** pursuant to Article 3(7), a gatekeeper shall:

   (a) refrain from using in competition with business users, any data not publicly available, which is generated ***or provided*** by those business users ***in the context of their use of the relevant*** core platform services or ***of the services offered together with or in support of the relevant*** core platform services**,** *including* ***data generated or provided*** *by the end users of those business users.*

   (b) 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 a 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**.**

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, including 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 identified pursuant to Article 3(7), 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.

I allow ***and technically enable*** the installation and effective use of third party software applications or software application stores using, or interoperating with, ***the*** operating ***system of the*** gatekeeper and allow these 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 and technically enable that change to be carried out easily. The gatekeeper shall*** not be prevented from taking ***to the extent 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.***

The gatekeeper shall furthermore not be prevented from applying to the extent 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 are duly justified by the gatekeeper.

(d) refrain from treating more favourably in ranking***, and related indexing and crawling,*** services and products offered by the gatekeeper itself ▌ compared to similar services or products of third party and apply ***transparent,*** fair and non-discriminatory conditions to such ranking;

(e) refrain from technically ***or otherwise*** restricting the ability of end users to switch between and subscribe to different software applications and services to be accessed using the ***core platform services*** of the gatekeeper, including as regards the choice of Internet access ***services*** for end users;

(f) ***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 of the gatekeeper identified pursuant to Article 3(7), that are available to services or hardware provided by the gatekeeper. Furthermore*** allow business users and ***alternative*** providers of ***services offered 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,*** that are available ***to*** or used ***by the 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 strictly necessary and proportionate measures are duly justified by the gatekeeper.***

(g) provide advertisers and publishers, ***and 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 ad inventory ***including aggregated and non-aggregated data. This data shall be provided in a manner that would allow advertisers and publishers to run their own verification and measurement tools to assess performance of the core services provided for by the gatekeepers***;

(h) provide ***end users and third parties authorised by an end user, upon 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 ▌;

(i) provide business users ***and*** third parties authorised by a business user, ***upon their request,*** free of charge, with effective, high-quality, continuous and real-time access 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 offered 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; for ▌ personal data, provide access and use only where ***the data are*** directly connected with the use effectuated by the end user in respect of the products or services offered by the relevant business user through the relevant core platform service, and when the end user opts in to such sharing ***by giving their consent***;

(j) provide to any third party ***undertaking providing*** online search engines, upon their 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 online search engines of the gatekeeper, subject to anonymisation for the query, click and view data that constitutes personal data**.**

(k) apply fair***, reasonable,*** and non-discriminatory general conditions of access for business users to its software application store***, online search engines and online social networking services identified in the designation decision*** pursuant to Article ***3(7)*** of this Regulation.

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.

(ka) refrain from making general conditions of termination from a core platform service disproportionate and ensure that such conditions of termination can be exercised without undue difficulty.

2. For the purposes of point (a) of paragraph 1 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 service or on services offered together with or in support of the relevant*** core platform service of the gatekeeper.

Article 6a

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

1. ***A gatekeeper providing number-independent interpersonal communications services identified in the designation decision pursuant to Article 3(7) shall make 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 basic functionalities pursuant to paragraph 1 shall comprise at least the following elements where the gatekeeper itself provides such functionalities to its own end users:***

(a) following the designation decision pursuant to Article 3(7):
1) end-to-end text messaging between two individual end users;
2) sharing of images, voice messages, videos and other attached files in end-to-end communication between two individual end users;

(b) within two year of
the designation:
1) end-to-end text messaging within groups of individual end users;
2) sharing of images, voice messages, videos and other attached files in end-to-end communication between a group chat and an individual end users;

(c) within four years of the designation:

1) end-to-end voice calls between two individual end users;

2) end-to-end video calls between two individual end users;

3) end-to-end voice calls between a group chat and an individual end user;

4) end-to-end video calls between a group chat and individual end user.

3. The level of security, including 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 such reference offer within the period laid down in Article 3(8) and update it where necessary.

5. Following the publication of the reference offer pursuant paragraph 3, 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. The gatekeeper shall implement any reasonable request for interoperability at the latest three months after receiving such request by rendering the requested basic functionalities operational. A request of the third party provider may cover some or all of the basic functionalities listed in paragraph 2.

6. The Commission may exceptionally, upon a reasoned request by the gatekeeper, prolong the periods of implementation pursuant to paragraph 2 or 5 where the gatekeeper demonstrates that this is necessary and proportionate to ensure effective interoperability and to preserve the necessary level of security, including end-to-end encryption where applicable.

7. The end users of number-independent interpersonal communications services of the gatekeeper and requesting provider 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.

8. The gatekeeper shall collect and exchange with the provider of number-independent interpersonal communications services that requests interoperability only the personal data of the end users that is strictly necessary to provide effective interoperability and in full compliance with the Regulation (EU) 2016/679 and Directive 2002/58/EC.

9. The gatekeeper shall not be prevented from taking to the extent strictly necessary and proportionate 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 duly justified by the gatekeeper.

Article 7

Compliance with obligations for gatekeepers

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

2. ▌ The Commission ***may, on its own initiative or upon request by a gatekeeper*** pursuant to paragraph ***2a, open proceedings pursuant to Article 18 and by a decision adopted in accordance*** with the ***advisory procedure referred to in Article [...] specify the measures that the gatekeeper concerned shall implement in order to effectively comply with the*** obligations laid down in Article 6***. . When opening proceedings on its own initiative in a case of circumvention pursuant to Article 11 such*** decision ***may concern the obligations laid down in Articles 5, 6 and Article 6a***. The Commission shall adopt ▌ a decision ***pursuant to this paragraph*** within six months from the opening of proceedings pursuant to Article 18.

2a. A gatekeeper may request the Commission to engage in a process to determine whether the measures that the gatekeeper intends to implement or has implemented to ensure compliance with Article 6 and Article 6a 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 4a.

3. ***Paragraphs 2 and 2a*** of this Article ***are*** without prejudice to the powers of the Commission under Articles 25, 26 and 27.

4. ***With a*** view of adopting the decision under paragraph 2, the Commission shall communicate its preliminary findings ***to the gatekeeper*** within three months from the opening of the proceedings. 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.

4a. In order to effectively enable interested third parties to 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 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 can be provided.

5. 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.

6. For the purposes of specifying the obligations under Article 6(1) points (j) and (k), 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.

6a. The Commission may, upon request or on its own initiative, reopen proceedings carried out pursuant to paragraph 2 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.

7. ***(deleted)***

Article 8

Suspension

1. The Commission may, ***acting*** on a reasoned request by the gatekeeper, exceptionally suspend, in whole or in part, a specific obligation laid down in Articles 5***, 6 and 6a*** for a core platform service ***identified in the designation decision pursuant to Article 3(7) by substantiated*** decision adopted in accordance with the advisory procedure referred to in Article ***[...]***, where the gatekeeper demonstrates that compliance with that specific obligation would endanger, due to exceptional circumstances beyond the control of the gatekeeper, the economic viability of the operation of the gatekeeper in the Union, and only to the extent ***and duration*** necessary to address such threat to its viability. ***In its suspension decision, the Commission shall identify the exceptional circumstances justifying the suspension.*** The Commission shall aim to adopt the suspension decision without delay and at the latest 3 months following receipt of a complete reasoned request ▌

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 the decision***. Following such a review the Commission shall either ***wholly or partly*** lift the suspension or decide that the conditions of 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 the relevant obligation to one or more individual core platform services already prior to the decision pursuant to paragraph 1.

In assessing the request, 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 these interests and the objectives of this Regulation. Such a request may be made and granted at any time pending the assessment of the Commission pursuant to paragraph 1.

Article 9

Exemption for overriding reasons of public interest

3. The Commission may, acting on a reasoned request by a gatekeeper or on its own initiative, by decision adopted in accordance with the advisory procedure referred to in Article ***[...]***, exempt it, in whole or in part, from a specific obligation laid down in Articles 5***, 6 and 6a*** in relation to an individual core platform service identified pursuant to Article 3(7), where such exemption is justified on the grounds set out in paragraph 2 of this Article. The Commission shall adopt the exemption decision at the latest ***three*** months after receiving a complete reasoned request. ***Such decision shall be accompanied by a reasoned statement explaining the grounds for the exemption.***

1b. 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.

2. An exemption pursuant to paragraph 1 may ▌ only be granted on grounds of:

(a) ***(deleted)***

(b) public health;

I public security.

3. ***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 the relevant obligation to one or more individual core platform services already prior to the decision pursuant to paragraph 1.

In assessing the request, the Commission shall take into account, in particular, the impact of the compliance with the specific obligation on the grounds in paragraph 2 as well as the effects on the gatekeeper concerned and on third parties. The suspension may be made subject to conditions and obligations to be defined by the Commission in order to ensure a fair balance between the goals pursued by the grounds in paragraph 2 and the objectives of this Regulation. Such a request may be made and granted at any time pending the assessment of the Commission pursuant to paragraph 1.

Article 9a

Reporting

1. Within six months after its designation pursuant to Article 3, and in application of Article 3(8), 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 6a.

2. Within six months after its designation pursuant to Article 3, the gatekeeper shall also publish and provide the Commission along with the report pursuant to paragraph 1 with a non-confidential summary of this report.
The report referred to in paragraph 1 of this Article and the non-confidential summary shall be updated together at least annually.
The Commission shall make a link to the non-confidential summary of the report available on its website.

Article 10

Updating obligations for gatekeepers

3. The Commission is empowered to adopt delegated acts in accordance with Article ***37 to supplement*** the obligations laid down in Articles 5 and 6***. This supplementing of the obligations shall be*** based on a market investigation pursuant to Article 17, ***which*** has identified the need ***to keep those*** obligations ***up to date 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.

1a. The scope of a delegated act adopted in accordance with the first subparagraph 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 a certain subset of business users or end users so that it benefits other subsets of business users or end users;

I specifying the manner in which the obligations of gatekeepers under Articles 5 and 6 are to be performed 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;

(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 relation between several core platform services of the gatekeeper to the relation between a core platform service and other services of the gatekeeper.***

1b. ***The Commission is empowered to adopt delegated acts in accordance with Article 37 to amend, the list of basic functionalities identified in paragraphs (2), (3) and (4) of Article 6a by adding or removing functionalities of number-independent interpersonal communication services.***
This amending shall be based on a market investigation pursuant to Article 17, which has identified the need to keep those obligations up to date to address practices that limit the contestability of core platform services or that are unfair.

1c. ***The Commission is also empowered to adopt delegated acts to supplement the obligations in Article 6a by specifying the manner in which those obligations are to be performed in order to ensure effective compliance with those obligations.***
This supplementing shall be based on a market investigation pursuant to Article 17, which has identified the need to specify the manner in which those obligations are to be performed to keep them up to date to address practices that limit the contestability of core platform services or that are unfair.

2. A practice ***as referred to in*** paragraph 1***, 1b and 1c*** shall be considered to be unfair or ***to*** limit the contestability of core platform services where:

(a) 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; or

(b) ***it is engaged in by gatekeepers and is capable of impeding innovation and limiting choice for business users and end users because it:***

(1) ***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 for other undertakings to enter or expand as suppliers of a core platform service or other services in the digital sector; or***

(2) ***prevents other operators from having the same access to a key input as the gatekeeper.***

Article 11

Article 7a

Anti-circumvention

-1 ***An undertaking providing core platform services shall not in any way segment, divide, subdivide, fragment or split these services through contractual, commercial, technical or any other means to circumvent the quantitative thresholds laid down in Article 3(2). Any of such practice of the gatekeeper shall not prevent the Commission from designating an undertaking pursuant to Article 3 (4).***

-1a. ***The Commission may, when suspecting that an undertaking providing core platform services engaged in a practice laid down in paragraph -1, require from the undertaking any information that it deems necessary to determine whether the undertaking concerned engaged in such a practice.***

1. A gatekeeper shall ensure that the obligations of Articles 5***, 6 and 6a*** are fully and effectively complied with.

1a. ***While the obligations of Articles 5, 6 and 6a apply in respect of core platform services listed pursuant to Article 3(7), their effective implementation shall not be undermined by any behaviour by the gatekeeper regardless of whether this behaviour is of a contractual, commercial, technical or any other nature, including the use of behavioural techniques or interface design.***

2. 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 required ***to do so*** under Regulation (EU) 2016/679 and 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 this consent by the business user more burdensome than for its own services.

3. A 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 6a***, 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 and business user's autonomy, decision-making, or free choice via the structure, design, function or manner of operation of a user interface or a part thereof***.

3a. Where a gatekeeper circumvents or attempts to circumvent any of the obligations in Article 5, 6 or 6a in a manner described in paragraphs 1 to 3 above, the Commission may open proceedings pursuant to Article 18 and adopt a decision pursuant to Article 7 specifying the measures that the gatekeeper concerned shall implement.

3b. Paragraph 3a is without prejudice to the powers of the Commission under Articles 25, 26 and 27.

Article 12

Obligation to inform about concentrations

3. 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 a Union competition authority under Regulation (EC) No 139/2004 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 turnover, ***their field of activity, including activities directly related to the concentration, the transaction value or an estimation thereof, a summary of the concentration, including its nature and rationale***, as well as ***a list*** of the ***Member States concerned by the operation***

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

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

3a. ***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 paragraph 1.***

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

3b. *The competent authorities of the Member States may use the information received under paragraph 1 to request the Commission to examine the concentration pursuant to Article 22 of Regulation (EC) No 139/2004.*

Article 13

Obligation of an audit

Within six 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 identified pursuant to Article 3. ***The Commission shall transmit the audited*** description ***to the European Data Protection Board.***

The Commission shall be ***empowered to adopt implementing acts in accordance to Article 36 (1) to develop the methodology and procedure of the audit***.

The gatekeeper shall make publicly available an overview of the audited description referred to in the first paragraph, taking into account the need to respect business secrets. The description and its publicly available overview shall be updated at least annually.

Chapter IV

Market investigation

Article 14

Opening of a market investigation

3. When the Commission intends to carry out a market investigation in view of the possible adoption of decisions pursuant to Articles 15, 16 and 17, it shall adopt a decision opening a market investigation.

1a. The Commission may exercise its powers of investigation pursuant to this Regulation before opening a market investigation pursuant to paragraph 1.

2. The opening decision shall specify:

(a) the date of opening of the investigation;

(b) the description of the issue to which the investigation relates to;

I the purpose of the investigation.

3. 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 the decision was based; ***or***

(b) the decision was based on incomplete, incorrect or misleading information ▌ .

3a. The Commission may also ask one or more competent national authorities to support its market investigation.

Article 15

Market investigation for designating gatekeepers

1. The Commission may ▌ conduct a market investigation for the purpose of examining whether ***an undertaking*** should be designated as a gatekeeper pursuant to Article 3(6), or in order to identify core platform services for a gatekeeper pursuant to Article 3(7). ***The Commission*** shall endeavour to conclude its investigation by adopting a decision ▌ within twelve months from the opening of the market investigation ***in accordance with the advisory procedure referred to in Article [...]***.

2. In the course of a market investigation pursuant to paragraph 1, the Commission shall endeavour to communicate its preliminary findings to the ***undertaking*** concerned within six months from the opening of the investigation. In the preliminary findings, the Commission shall explain whether it considers, on a provisional basis, that the ***undertaking*** should be designated as a gatekeeper pursuant to Article 3(6) ***and list, on a provisional basis, the relevant core platform services pursuant to article 3(7)***.

3. Where the ***undertaking*** satisfies the thresholds set out in Article 3(2), but has presented ***sufficiently*** substantiated arguments in accordance with Article ***3(4bis) that manifestly put into question the presumption in Article 3(2)***, the Commission shall endeavour to conclude the market investigation within five months from the opening of the market investigation ▌ . In that case**,** the Commission shall endeavour to communicate its preliminary findings pursuant to paragraph 2 to the ***undertaking*** within three months from the opening of the investigation.

4. When the Commission pursuant to Article 3(6) designates as a gatekeeper ***an undertaking providing*** core platform services that does not yet enjoy an entrenched and durable position in its operations, but it is foreseeable that it will enjoy such a position in the near future, it ***may*** declare applicable to that gatekeeper only ***the*** obligations laid down in Article ***5 points (b) (c), (ca) and (d)*** and Article 6(1) points (e), (f), (h)***, (i) and (ka)*** as specified in the designation decision. The Commission shall only declare applicable those obligations that are appropriate and necessary to prevent that the gatekeeper concerned achieves 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 16

Market investigation into systematic non-compliance

3. ***The Commission may conduct a market investigation for the purpose of examining whether a gatekeeper has engaged in systematic non-compliance.*** Where the market investigation shows that a gatekeeper has systematically infringed ***one or several of*** the obligations laid down in Articles 5***, 6 or 6a*** and has ***maintained,*** strengthened or extended its gatekeeper position in relation to the ***requirements*** under Article 3(1), the Commission may by decision adopted in accordance with the advisory procedure referred to in Article ***[...]*** impose on such gatekeeper any behavioural or structural remedies which are proportionate ▌ and necessary to ensure ***effective*** compliance with this Regulation. The Commission shall conclude its investigation by adopting a decision within twelve months from the opening of the market investigation.

1a. ***For those purposes, the remedy imposed by the Commission 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, to prohibit, during a limited time-period, for the gatekeeper to enter into a concentration within the meaning of Article 3 of Regulation (EC) No 139/2004 regarding those 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.***

2. ***(deleted)***

3. A gatekeeper shall be deemed to have engaged in a systematic non-compliance with the obligations laid down in Articles 5 and 6, where the Commission has issued at least three non-compliance ▌ decisions pursuant to Articles 25 ▌ against a gatekeeper in relation to any of its core platform services within a period of ***eight*** 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. ***(deleted)***

5. The Commission shall communicate its objections to the gatekeeper concerned within six months from the opening of the investigation. In its objections, the Commission shall explain whether it preliminarily considers that the conditions of paragraph 1 are met and which remedy or remedies it preliminarily considers necessary and proportionate.

5a. ***In order to effectively enable interested third parties to provide comments, the Commission shall at the same time as 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 can be provided.***

5b. ***Where the Commission intends to adopt a decision pursuant to paragraph 1 by making commitments offered by the gatekeeper pursuant to Article 23 binding on that gatekeeper, it shall publish a non-confidential summary of the case and the main content of the commitments. Interested third parties may submit their observations within a reasonable timeframe which is set by the Commission.***

6. ***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 objections, 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 six ***months***.

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

Article 17

Market investigation into new services and new practices

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 or ***for the purpose of detecting*** types of practices that ▌ limit the contestability of core platform services or ***type of practices that are*** unfair and which are not effectively addressed by this Regulation. It shall issue a public report at the latest within ***18*** months from the opening of the market investigation. ***In its assessment, the Commission shall take into account any relevant findings of proceedings carried out under Articles 101 and 102 of the TFEU concerning digital markets as well as any other relevant developments.***

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

Where appropriate, that report shall ***be accompanied by***:

(a) a 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 point 2 of Article 2 ***or to include new obligations in Chapter III***; ***or***

(b) ***a draft delegated act supplementing the obligations laid down in*** Articles 5 ***and 6 or amending and supplementing the obligations laid down in Article 6a*** as provided for in Article 10.

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

Chapter V

Investigative, enforcement and monitoring powers

Article 18

Opening of proceedings

Where the Commission intends to carry out proceedings in view of the possible adoption of decisions pursuant to ***Articles*** 7, 25 and 26, it shall adopt a decision opening a proceeding.

The Commission may exercise its powers of investigation pursuant to this Regulation before opening proceedings.

Article 19

Requests for information

1. ***In order to carry out the duties assigned to it by 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 request access to ***any*** data ▌ and algorithms of undertakings and ***information about testing and*** request explanations on those by a simple request or by a decision.

2. ***(deleted)***

3. 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, and the penalties provided for in Article 26 for supplying incomplete, incorrect or misleading information or explanations.

4. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state the purpose of the request, specify what information is required and fix the time-limit within which it is to be provided. Where the Commission requires undertakings to provide access to ***any data*** and algorithms, 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 penalties provided for in Article 26 and indicate or impose the periodic penalty payments provided for in Article 27. It shall further indicate the right to have the decision reviewed by the Court of Justice.

5. 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.

6. 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 20

Power to carry out interviews and take statements

In order to carry out the duties assigned to it by 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 interview by any technical means***.

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

Article 21

Powers to conduct ▌ inspections

3. ***In order to carry out the duties assigned to it by this Regulation,*** the Commission may conduct ***all necessary*** inspections ▌ of an undertaking or association of undertakings.
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1a. The officials and other accompanying persons authorised by the Commission to conduct an inspection are empowered:

(a) to enter any premises, land and means of transport of undertakings and associations of undertakings;

(b) ***to examine the books and other records related to the business, irrespective of the medium on which they are stored;***

I ***to take or obtain in any form copies of or extracts from such books or records;***

(d) ***to 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;***

(e) ***to seal any business premises and books or records for the period and to the extent necessary for the inspection;***

(f) ***to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;***

2. ***To carry out inspections, the Commission may request*** the assistance of auditors or experts appointed by the Commission pursuant to Article 24(2) ***as well as the assistance of the competent authority of the Member State, enforcing the rules referred to in Article 1(6) in whose territory the inspection is to be conducted***.

3. During ▌ inspections the Commission**,** auditors or experts appointed by it ***and the 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 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***.

3a. ***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 penalties provided for in Article 26 in case the production of the required books or other records related to the business is incomplete or where the answers to questions asked under paragraphs 1a and 3 are incorrect or misleading. In good time before the inspection, the Commission shall give notice of the inspection to the competition authority of the Member State in whose territory it is to be conducted.***

4. Undertakings or associations of undertakings are required to submit to an [redacted] inspection ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the visit, set the date on which it is to begin and indicate the penalties provided for in Articles 26 and 27 and the right to have the decision reviewed by the Court of Justice.

4a. ***Officials of as well as those authorised or appointed by the 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 specified in paragraph 1a and 3.***

4b. ***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.***

4c. ***If the assistance provided for in paragraph 8 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.***

4d. Where authorisation as referred to in paragraph 9 is applied for, the national judicial authority shall control 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 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 for 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 22

Interim measures

1. In case of urgency due to the risk of serious and irreparable damage for business users or end users of gatekeepers, the Commission may, by decision ***adopted*** in accordance with the advisory procedure referred to in Article ***[...]***, order interim measures against a gatekeeper on the basis of a prima facie finding of an infringement of ***Article 5, Article 6 or Article 6a***.

2. A decision pursuant to paragraph 1 ***shall*** only be adopted in the context of proceedings opened ***with a view to*** the possible adoption of a decision of non-compliance pursuant to Article 25(1). ***That*** decision shall apply for a specified period of time and may be renewed in so far this is necessary and appropriate.

Article 23

Commitments

1. If during proceedings under ***Article 16*** the gatekeeper concerned offers commitments for the relevant core platform services to ensure compliance with the obligations laid down in Articles 5***, 6 and 6a*** the Commission may by decision adopted in accordance with the advisory procedure referred to in Article ***[...]*** make those commitments binding on that gatekeeper and declare that there are no further grounds for action.

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;

I the decision was based on incomplete, incorrect or misleading information provided by the parties.

(ca) the commitments are not effective.

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

Article 24

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 6a*** and the decisions taken pursuant to Articles 7, 16, 22 and 23. ***These actions may include in particular the imposition of an obligation on the gatekeeper to retain all documents deemed to be relevant to assess the gatekeepers' implementation of and compliance with these obligations and decisions.***

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 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 24a

Information by third parties

3. ***1. Any third party including business users, competitors or end-users of the core platform services identified pursuant to Article 3(7) of this Regulation as well as their representatives, may inform the national authority competent to enforce the rules referred to in Article 1(6) or directly the Commission about any practice or behaviour by gatekeepers that falls within the scope of this Regulation.***
2. The competent national authorities and 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 authority determines based on the information received pursuant to paragraph 1 that there may be an issue of non-compliance with this Regulation, it shall transfer this information to the Commission.

Article 24b

Compliance function

1. ***Gatekeepers shall establish 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 compliance function pursuant to 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 the head of the compliance function appointed pursuant to paragraph 1 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 can 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.***

   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 23, without prejudice to the Commission being able to appoint independent external experts pursuant to Article 24(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 independence of the compliance function, including the segregation of duties 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 25

Non-compliance

1. The Commission shall adopt a non-compliance decision in accordance with the advisory procedure referred to in Article ***32*** where it finds that a gatekeeper does not comply with one or more of the following:

(a) any of the obligations laid down in Articles 5***, 6 or 6a***;

(b) measures specified in a decision adopted pursuant to Article 7(2);

I measures ordered pursuant to Article 16(1);

(d) interim measures ordered pursuant to Article 22; or

(e) commitments made legally binding pursuant to Article 23.

1a. The Commission shall endeavour to adopt its decision within 12 months from the opening of proceedings pursuant to Article 18.

2. Before adopting the decision pursuant to paragraph 1, 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.

2a. Where it intends to adopt a decision pursuant to paragraph 1, the Commission may consult third parties.

3. In the non-compliance decision adopted pursuant to paragraph 1, 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 the decision.

4. The gatekeeper shall provide the Commission with the description of the measures ***that it has taken*** to ensure compliance with the ***non-compliance*** decision adopted pursuant to paragraph 1.

5. Where the Commission finds that the conditions of paragraph 1 are not met, it shall close the investigation by a decision.

Article 26

Fines

1. In the decision ***adopted*** pursuant to Article 25, 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 pursuant to Articles 5***, 6 and 6a***;

(b) the measures specified by the Commission pursuant to a decision under Article 7(2);

I measures ordered pursuant to Article 16(1);

(d) a decision ordering interim measures pursuant to Article 22;

(e) a commitment made binding by a decision pursuant to Article 23.

1a. Notwithstanding paragraph 1, the Commission may impose on a gatekeeper fines up to 20% of its total worldwide turnover in the preceding financial year where it finds in a decision pursuant to Article 25 that a gatekeeper has committed the same or a similar infringement of an obligation laid down in Article 5, 6 or 6a in relation to the same core platform service as it was found to have committed in a decision adopted in the 8 preceding years.

2. The Commission may by decision impose on undertakings and associations of undertakings fines not exceeding 1% of ***their*** total ***worldwide*** turnover in the preceding financial year where they intentionally or negligently:

(-a) ***fail to comply with the obligation to notify the Commission according to Article 3(3);***

(a) fail to provide within the time-limit information that is required for assessing their designation as gatekeepers pursuant to Article 3(2) or supply incorrect, incomplete or misleading information;

(b) fail to notify information ▌ or supply incorrect, incomplete or misleading information ***that is required pursuant to Article 12***;

I fail to submit the description ***or supply incorrect, incomplete or misleading information*** that is required pursuant to Article 13;

(d) ***fail to supply or*** supply incorrect, incomplete or misleading information or explanations that are requested pursuant to Articles 19 or Article 20;

(e) fail to provide access to data-bases and algorithms pursuant to Article 19;

(f) 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 21;

(g) refuse to submit to an ▌ inspection pursuant to Article 21***;***

(ga) ***fail to comply with the measures adopted by the Commission pursuant to Article 24; or***

(gb) ***fail to comply with the conditions for access to the Commission's file pursuant to Article 30(4).***

3. In fixing the amount of the fine, ***the Commission*** shall ***take regard of*** the gravity, duration, recurrence, and, for fines imposed pursuant to paragraph 2, delay caused to the proceedings.

4. ▌ When a fine is imposed on an association of undertakings taking account of the ***worldwide*** turnover of its members and the association is not solvent, the association 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 the 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.

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 infringing decision of the association ***of undertakings*** and either were not aware of its existence or have actively distanced themselves from it before the Commission ***opened proceedings under Article 18***.

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 27

Periodic penalty payments

1. The Commission may by decision impose on undertakings, including gatekeepers where applicable, ***and association 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 pursuant to a decision under Article 7(2);

(a) to comply with the decision pursuant to Article 16(1);

(b) to supply correct and complete information within the time limit required by a request for information made by decision pursuant to Article 19;

I to ensure access to data-bases and algorithms of undertakings and to supply explanations on those as required by a decision pursuant to Article 19;

(d) to submit to an [redacted] inspection which was ordered by a decision taken pursuant to Article 21;

(e) to comply with a decision ordering interim measures taken pursuant to Article 22(1);

(f) to comply with commitments made legally binding by a decision pursuant to Article 23(1);

(g) to comply with a decision pursuant to Article 25(1).

2. Where the undertakings ***or association of undertakings*** have satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may by decision adopted in accordance with the advisory procedure referred to in Article ***32*** set the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision.

Article 28

Limitation periods for the imposition of penalties

1. The powers conferred on the Commission by Articles 26 and 27 shall be subject to a ***five*** 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.

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***;

I the opening of a proceeding by the Commission pursuant to Article 18.

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 [redacted] .

Article 29

Limitation periods for the enforcement of penalties

1. The power of the Commission to enforce decisions taken pursuant to Articles 26 and 27 shall be subject to a limitation period of five years.

2. Time shall begin to run on 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;

(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;

(b) enforcement of payment is suspended pursuant to a decision of the Court of Justice ***or to a decision by a national court***.

Article 30

Right to be heard and access to the file

1. Before adopting a decision pursuant to Article 7, Article 8(1), Article 9(1), Articles 15, 16, 22, 23, 25 and 26 and Article 27(2), the Commission shall give the gatekeeper or undertaking or association of undertakings concerned the opportunity of being heard on:

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

(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's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 14 days.

3. The Commission shall base its decisions only on objections on which gatekeepers, undertakings and associations of undertakings concerned have been able to comment.

4. The rights of defence of the gatekeeper or undertaking or association of undertakings concerned shall be fully respected in any proceedings. The gatekeeper or 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. The ***Commission shall have the power to issue decisions setting out such terms of disclosure in case of disagreement between the parties. 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 30a

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.

That report 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 13
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.

The report shall be made public on the website of the Commission.

Article 31

Professional secrecy

3. The information collected pursuant to ***this Regulation*** shall be used only for the purposes of this Regulation.

1a. The information collected pursuant to Article 12 shall be used only for the purposes of this Regulation, Regulation (EC) No 139/2004 and national merger rules.

1b. The information collected pursuant to Article 13 shall be used only for the purposes of this Regulation and Regulation (EU) 2016/679.

2. Without prejudice to the exchange and to the use of information provided for the purpose of use pursuant to Articles ***[32a, 33 and 37a]***, the Commission, the authorities of the Member States, their officials, servants and other persons working under the supervision of these authorities and any natural or legal person, including auditors and experts appointed pursuant to Article 24(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 31a

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.***

3. ***The Commission may consult national authorities where appropriate, on any matter relating to the application of the Regulation.***

Article 32

(deleted)

1. (***deleted***)

2. ***(deleted)***

3. ***(deleted)***

4. (***deleted***)

Article 31b

Cooperation and coordination with competent authorities enforcing competition rules

1. *The Commission and the 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 action through the European Competition Network (ECN). They shall have the power to provide one another with any matter of fact or of law, including confidential information. In case 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 the this Regulation and the enforcement of cases referred to in Article 1(6) of such authorities. The Commission may lay down such arrangements in the implementing act pursuant to point (ga) of Article 36(1).*

2. ***Where a national authority 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 competent authorities enforcing the rules referred to in Article 1(6) of the other Member States.***

3. ***Where a national authority 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 authority 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 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 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 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 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 6a 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 18 shall relieve the 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 pending. The authority shall report to the Commission on the findings of its investigation in order to support the Commission in its role as sole enforcer of this Regulation.*

Article 31c

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.*

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 must 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 ability of national courts to request a preliminary ruling under Article 267 of the TFEU.***

Article 31d

High-Level Group

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

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 and the group shall not exceed 30 members.***

4. ***In order to facilitate the work of the high-level group, the Commission shall provide its secretariat. 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.***

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;
   (b) advice and expertise promoting a consistent regulatory approach across different regulatory instruments. 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 national authorities composing the 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 should be communicated to the European Parliament and to the Council.

(c) 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 modify, add or remove rules of the Regulation, to ensure that digital markets across the Union are contestable and fair.

Article 33

Request for a market investigation

3. Three or more Member States ***may*** request the Commission to open an investigation pursuant to Article 15 because they consider that there are reasonable grounds to suspect that ***an undertaking*** should be designated as a gatekeeper.

1a. One or more Member State may request the Commission to open an investigation pursuant to Article 16 because it considers that there are reasonable grounds to suspect that a gatekeeper has systematically infringed the obligations laid down in Articles 5, 6 and 6a *and has maintained, further strengthened or extended its gatekeeper position in relation to the characteristics under Article 3(1).*

1b. Three or more Member States may request the Commission to open an investigation pursuant to Article 17 because they consider that there are reasonable grounds to suspect that one or more services within the digital sector should be added to the list of core platform services pursuant to Article 2(2) or that there are reasonable grounds to suspect that one or several types of practices are not effectively addressed by this Regulation and may limit the contestability of core platform services or may be unfair.

2. Member States shall submit evidence in support of their request ***pursuant to paragraphs 1, 1a and 1b. For requests pursuant to paragraph 1b, 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.***

2a. The Commission shall within four months examine whether there are reasonable grounds to open an investigation pursuant to paragraphs 1, 1a or 1b. The Commission shall publish the results of its assessment.

Chapter VI

General provisions

Article 34

Publication of decisions

1. The Commission shall publish the decisions which it takes pursuant to Articles 3, ***4, 7(2)***, 8, 9, ***14,*** 15, 16, 17***, 18***, 22, 23(1), 25, 26 and 27. 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 35

Review by the Court of Justice of the European Union

In accordance with Article 261 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union 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 36

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, Article 6(1) or*** Article ***6a;***

(ba) the form, content and other details of the reasoned request pursuant to Article 7(7);

(bb) the form, content and other details of the reasoned requests pursuant to Articles 8 and 9;

(bc) the form, content and other details of the regulatory reports delivered pursuant to Article 9a;

I the form, content and other details of notifications and submissions made pursuant to Articles 12 and 13;

(d) the practical arrangements ***for the calculation and extension of deadlines***;

(e) the practical arrangements of the proceedings concerning investigations pursuant to Articles 15, 16, 17, and proceedings pursuant to Articles 22, 23 and 25;

(f) the practical arrangements for exercising rights to be heard provided for in Article 30;

(g) the practical arrangements for the negotiated disclosure of information provided for in Article 30;

(ga) the practical arrangements for the cooperation and coordination between the Commission and national authorities provided for in Articles [...] and [...].

(gb) operational and technical arrangements in view of implementing interoperability of number-independent interpersonal communication services pursuant to Article 6a.

(gc) the methodology and procedure for the audited description of techniques used for profiling of consumers. When developing a draft implementing act, the Commission shall consult the European Data Protection Supervisor and may consult the European Data Protection Board, civil society and other relevant experts .

(h) THIS POINT IS MISSING. THANK YOU FOR USING ANOTHER LANGUAGE.

2. ***Implementing acts laid down in points (a) to (gc) of paragraph 1 shall be adopted in accordance with the advisory procedure referred to*** in Article ***32***. ▌ Implementing ***act laid down in point (ga) of paragraph 1*** shall be adopted in accordance with the ***examination*** procedure referred to in Article ***32***. Before the adoption of any measures pursuant to paragraph 1, the Commission shall publish a draft thereof and invite all interested parties to submit their comments within the time limit it lays down, which may not be less than one month.

Article 36a

Guidelines

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

Article 36b

Standardisation

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

Article 37

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(5), Article 3(5a), Article 10 (1) and Article 10 (2)*** shall be conferred on the Commission for a period of five years from DD/MM/YYYY. The Commission shall draw up a report in respect of the delegation of power not later than nine 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 three months before the end of each period.

3. The delegation of power referred to in Articles ***3(5), 3(5a), Article 10(1) and Article 10 (2)*** 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 Inter-institutional 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.

6. A delegated act adopted pursuant to Articles ***3(5), 3(5a), Article 10(1) and (2)*** shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two 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 two months at the initiative of the European Parliament or of the Council.

Article 37a

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.

Article 37b

Amendment to Directive (EU) No 2019/1937

In Point J of Part I of the Annex to Directive (EU) No 2019/1937, the following point is added: '(iv) Regulation […] of the European Parliament and of the Council, of […], on contestable and fair markets in the digital sector.'

Article 37c

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.*

3. ***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.***

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

5. ***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 37d

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 37f

Amendments to Directive (EU) 2020/1828 on Representative Actions for the Protection of the Collective Interests of Consumers

The following is added to Annex I:

"(X) Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act)"

Article 38

Review

1. By DD/MM/YYYY, and subsequently every three years, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.

2. The evaluation 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 small and medium-sized enterprises and end-users. Moreover the Commission shall evaluate if the scope of article 6a may be extended to the social networks services.

2. The evaluations shall establish whether ***it is required to modify*** rules, including regarding the list of core platform services laid down in point 2 of Article 2, the obligations laid down in Articles 5 and 6 and their enforcement, [redacted] 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.

3. ***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 39

Entry into force and application

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

2. This Regulation shall apply from six months after its entry into force.

By way of derogation Articles ***3(5) and 3(5a) and Articles 31d, 36, 36a, 36b, 37 and [37c]*** shall apply from [date of entry into force of this Regulation].

Notwithstanding the first and second subparagraphs of this Article, Article XY [on the application of Directive (EU) 2020/1828] and Article 37d shall apply from 25 June 2023. However, if that date precedes the date of application referred to in the second subparagraph, the application of Article XY and article 37d shall be postponed until the date of application referred to in the second subparagraph.

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX

Draft Agreement

a. 'General'

1. The present annex aims at specifying the methodology for identifying and calculating the '***active*** end users' and the '***active*** business users' for each core platform service defined in Article 2(2). It provides a reference to enable an undertaking to assess whether its core platforms 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). It will therefore equally be of relevance to any broader assessment under Article 3(6). 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 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'. In doing so, the Commission is bound by the timelines laid down in the relevant provisions of this Regulation. Nothing in the present annex should constitute a legal basis for tracking users. The methodology contained in this annex is also without prejudice to any of the obligations in the Regulation, notably including those laid down in Article 3(3) ***and*** (6) and Article 11(1). In particular, the required compliance with Article 11(1) 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. These measurements or the best approximation available shall be consistent with, and include, those reported under Article 13.

2. Article 2 ***points*** (16) and (17) 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', the present 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 ***active*** business user for different core platform services.

b. ‘***Active*** end users’

4. Number of ‘unique users’ as regards ‘***active*** end users’: unique 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 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 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.

5. Article 3(2) also requires that the number of ‘monthly ***active*** end users’ is based on the average number of monthly ***active*** end users ***throughout the largest part of*** the ~~last~~ financial year. ***The notion ´the largest part of the*** ~~***last***~~ ***financial year´ is intended to allow*** an undertaking providing core platform service(s) ***to discount*** outlier figures in a given year. Outlier figures inherently mean figures that fall ***significantly*** outside the normal ~~values~~ **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.*** ~~such as a sales peak that occurred during a single month in a given year.~~

c. ‘***Active*** business users’

6. Number of ‘unique users’ as regards ‘business users’, ‘unique users’ are 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’

7. The undertaking submitting 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) in the information provided to the Commission.

b. The undertaking shall be responsible for providing precise and succinct explanations about the methodology used to arrive at the information provided to the Commission and of 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 of the solutions adopted to address that risk.

c. The undertaking shall provide the Commission 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 service(s).

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. 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.

b. The undertaking providing core platform service(s) shall consider as distinct core platform services those core platform services, which despite belonging to the same category of core platform services pursuant to Article 2(2) 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.

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) despite belonging to the same category of core platform services pursuant to Article 2 ***point*** (2), 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.

e. 'Specific definitions'

1. Specific definitions per core platform service: The below list sets out specific definitions of '***active*** end users' and '***active*** business users' for each core platform service.

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 visit*~~, 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.
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 application or a functionality to make an existing 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.
Advertising services	<u>Proprietary sales of advertising space</u> Number of unique end users who were exposed to an advertisement impression at least once in the month. <u>Advertising intermediation (including advertising networks, advertising exchanges and any other advertising intermediation services)</u> Number of unique end users who were exposed to an advertisement impression which triggered the advertising intermediation service at least once in the month.	<u>Proprietary sales of advertising space</u> Number of unique advertisers who had at least one advertisement impression displayed during the year. <u>Advertising intermediation (including advertising networks, advertising exchanges and any other advertising intermediation services)</u> 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.